

Re-Engaging Families with Their Young People

A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.

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[‡]This expression is borrowed from Gabrielle Maxwell and Allison Morris (in Alder & Wundersitz, 1994, p.42).

Declaration by the Candidate

I, Diana Frances Johns, declare that:

- a) except where due acknowledgment has been made, this work is that of myself alone;
- b) this work has not been submitted previously, in whole or part, to qualify for any other academic award;
- c) the content of the thesis is the result of work which has been carried out since the official commencement date of the approved research program;
- d) any editorial work, paid or unpaid, carried out by a third party is acknowledged.

Signed:

Dated:

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List of Abbreviations

ACT	Australian Capital Territory
CC	conference convenor
DHS	Department of Human Services (Victorian Government)
FM	family member
JJ	juvenile justice
LR	legal representative
NSW	New South Wales, Australia
NT	Northern Territory, Australia
NZ	New Zealand
Obs.	observer
OS	offender supporter
PO	police officer/informant
PV	primary victim
RISE	Reintegrative Shaming Experiment (Canberra, ACT)
RMIT	Royal Melbourne Institute of Technology (Victoria)
SA	South Australia
SAJJ	South Australian Research on Group Conferencing
SV	secondary victim
TAS	Tasmania, Australia
VIC	Victoria, Australia
VOM	Victim Offender Mediation
VORP	Victim Offender Reconciliation Program
VR	victim representative
VRAS	Victims Referral and Assistance Service (Victoria)
WA	Western Australia
YP	young person
YW	youth worker

Table of Contents

List of Tables	ix
List of Figures	x
Abstract	1
Chapter One: Beginnings, Bounds & Bases	3
1.0 Introduction	3
1.1 Beginnings — the conception of the study	3
1.2 What is restorative justice?	4
1.3 Conferencing in Australia	6
1.4 Bounds — the scope and setting of the research	10
1.5 Bases — the grounds of the study	11
1.6 Conclusion & presentation of this thesis	13
Chapter Two: Tracing Theories, Reviewing Research	15
2.0 Introduction	15
2.1 The roots of restorative justice	15
2.2 Reviewing the research on conferencing	19
2.3 Measuring the ‘success’ of conferences	28
2.4 Assessing the theory of Reintegrative Shaming	32
2.5 Conclusion	38
Chapter Three: Constructing Concepts	40
3.0 Introduction	40
3.1 Labelling, stigma, diversion — social reactions to crime	41
3.2 Crime as conflict — ‘repairing the harm’	47
3.3 Engaging ‘community’ in the doing of justice	52
3.4 Sources of social control — ‘communities of influence and care’	60
3.5 Conclusion	67
Chapter Four: Research Orientation & Design	68
4.0 Introduction	68
4.1 Ontological & epistemological framework	69

4.2	Theoretical orientation	69
4.3	Research questions	70
4.4	Why a qualitative approach?	71
4.5	Research strategy	73
4.6	Methods	74
4.7	Reliability and validity	85
4.8	Ethical issues	87
4.9	Conclusion	88
Chapter Five: Disgusted, Ashamed, Proud, Sorry		90
5.0	Introduction	90
5.1	Research participants	90
5.2	Background factors	93
5.3	Observation of the conferences	109
5.4	Conclusion	119
Chapter Six: If you show respect, you'll get it back		120
6.0	Introduction	120
6.1	Comparing the outcome plans of B and G	120
6.2	Emergent themes: power, context, success	139
6.3	Conclusion	152
Chapter Seven: Facing up to it — a good step forward		153
7.0	Introduction	153
7.1	Labels, stigma, diversion — the 'many sides of me'	154
7.2	Repairing harm, reconciling interests	161
7.3	Community involvement — 'gathering of the tribe'	170
7.4	Sources of social control — toeing 'the line'	176
7.5	Conclusion	183
Chapter Eight: Re-Engaging Families — Drawing Conclusions		185
8.0	Introduction	185
8.1	Revisiting the research questions	186
8.2	Strengths & limitations	192

8.3	Future research	195
8.4	Conclusion	195
References		197
Appendices		212

List of Tables

Table 5.1 Research participants _____ 91

Table 5.2 Participants in the conferences observed _____ 111

List of Figures

Figure 5.1 Typical conference setting	109
Figure 6.1 B's outcome plan	123
Figure 6.2 G's initial outcome plan	129
Figure 6.3 G's outcome plan addenda	129
Figure 6.4 Configuration of power at the time of the offence	140
Figure 6.5 Power relations at the beginning of the conference	141
Figure 6.6 Power dynamics during the conference	143
Figure 6.7 Power relations at the close of the conference	144

Abstract

This is a qualitative study of a restorative justice group conferencing program for young offenders in the Melbourne metropolitan area, Victoria, conducted during the period 2000 to 2003. The program, funded by the Department of Human Services' Juvenile Justice branch, was run by Anglicare Victoria until June 2003 after which it was transferred to another agency. During the period of the study approximately ninety cases were referred to the program, of which seven comprise the research sample.

The study is focused on the experience of conferencing from the perspective of young people (offenders), their families and supportive others. Of particular interest is the role of the offender's family (and/or significant others), the nature of their support, and how this impinges on the conference and its outcomes. Although the supporters' role is pivotal in the conferencing process, its significance has remained largely implicit in the research to date. The objective of the study is to explore this crucial element, using an interpretive approach. Seven conferences were observed, followed by in-depth interviews conducted with four of the young people and members of their family and support network. Observational and interview data were supplemented by material gathered from a focus group and interviews with key stakeholders including police, legal representatives, victim support workers and conference convenors.

The results of abductive analysis of the data show the conference to be a complex interactional process, in which young people's supports play a vital role. In comparative analysis of two of the conferences observed, it emerges that effective support of the young person by caring others is critical to the 'success' of the conference. Effective support is marked by the combination of: a disapproving response to the offending; a pledge of ongoing support (physical, moral and emotional); and clear behavioural expectations and boundaries. Significantly, this support is not necessarily provided by family. Ineffective support, conversely, can impede agency in the decision-making process and limit the achievability of intended outcomes.

It emerges that participants' exercise of power and agency in the conference has a significant bearing on its outcomes. The interactional dynamics shape the experience of the encounter for young people and their supports and, in particular, their level of participation in decision-making. The convenor's role is shown to be crucial in establishing and maintaining conditions of mutual respect and listening; in balancing the interests and demands of conference participants, and mediating power inequity. Moreover, program constraints, such as convenor experience and training, have a bearing on the meeting and its consequences. Family members' preparation through adequate briefing, for instance, and their subsequent empowerment in the process impinges on its success.

The findings reveal diversity in how the 'success' of a conference may be construed. While much attention is focused on rates of recidivism as measures of success, this study uncovers other meaningful indicators of a 'successful' conference. A young person's demonstrated awareness of the harm they caused, for example; a sincere apology or reparative gesture; the forging of new, trusting relationships; a practical, realistic outcome plan; or a resultant non-conviction. It concludes, moreover, that outcomes deemed successful by the young people and their families are likely to contribute to the reintegrative process. If a conference fails to meet the needs of its participants, this is likely to have a disintegrative effect, potentially manifesting as further offending.

In this study, observation is shown to be a rich source of empirical material. Triangulation of data collection methods and sources underscores the validity of the findings and reliability of their interpretation.

CHAPTER ONE

Beginnings, Bounds and Bases

1.0 Introduction

This chapter sets the scene and describes the focus of the research. A brief account of its beginnings is followed by a definitional overview of restorative justice. The development of conferencing is traced and the Victorian model explained. The bounds of the research are drawn — its scope and setting; and its bases — its aims and contribution to knowledge. Here the questions around which the study is built are articulated.

1.1 Beginnings – the conception of the study

The idea for this research developed from an interest in mediation and restorative justice. Curiosity about the potential to promote understanding and foster conciliation between individuals, families and communities, was fuelled by questions about why such processes were not a more familiar feature of our justice landscape. Group conferencing, for instance, seeks to engage the support of offenders' family and community (Maxwell & Morris, 1994, p.18; Wundersitz, 1994, p.96; Tauri & Morris, 1997, p.163-4; Condliffe, 1998, p.141; Daly & Hayes, 2001, p.2). Yet in the discourse around criminal justice administration such ideals appear tokenistic, apparently sitting awkwardly within a formal, authoritative and legalistic justice paradigm.

Exploring the background to 'informal' remedies, such as conferencing, reveals diversity in origins and development. Moreover, the burgeoning body of scholarship promises much yet offers little explanation of how or why such practices 'work'. This research grew from a desire to understand these issues. The study is thus exploratory in that it seeks to "develop a well-grounded mental picture of what is occurring" (Neuman, 1997, p.20), for young people, their families and supportive others who participate in conferences. It is descriptive, too, in seeking to portray the workings of the restorative process

within a specific context: conferencing with young offenders in Victoria. It begins with a question: what exactly *is* restorative justice?

1.2 What is restorative justice?

‘Restorative’ is the term assigned to different ways of ‘doing justice’ that share a prevailing motive: to repair the harm caused by crime, by bringing together the people affected (Wright, 1991, in Fisher, 1993, p.126; Bazemore & Walgrave, 1999, p.48; Strang, 2000, p.24). Attributed to Eglash¹ (1958) (Van Ness, 1993, p.258; Gehm, 1998, p.30; Sarre, 1999, p.7; Schmid, 2001, p.5; Braithwaite, 2002, p.6), the ‘restorative’ label signifies a very different way of conceptualising crime to that embodied in traditional courtroom processes. Its broad appeal as an alternative paradigm, however, belies a lack of consensus about how to define restorative justice (Marshall, 1996, p.35; Strang, 2000, p.22; Daly & Hayes, 2001, p.1; Schmid, 2001, p.5; Daly, 2002, p.5). Too often commentators² focus on what it is not, many using Zehr’s (1985, 1990) oppositional grid to contrast its features to those of a retributive model, which can be misleading in its oversimplification (Marshall, 1996, p.35; Condliffe, 1998, p.145; Daly, 1998, p.7; Gehm, 1998, p.11; Barton, 2000, p.4; Schmid, 2001, p.5; Daly, 2002, p.8).

As Marshall observes, the greatest danger in framing restorative and retributive justice in such oppositional terms is that it “embodies precisely that *adversarial* stance that restorative justice is meant to replace” (1996, p.35). Further, the implication of contrasting retributive with restorative justice is that the latter is assumed to lack any punitive aspect at all. This assumption, Daly (2000b, p.4) contends, is empirically unsustainable and evinces a lack of understanding of actual conferencing practice, belied by much theoretical discussion on the subject. In fact the confronting nature of a

¹ The term ‘restorative justice’ was probably first used by Albert Eglash (1958) in his writings about “creative restitution”. He suggested that there are three types of criminal justice: retributive (based on punishment); distributive (based on therapeutic treatment); and restorative justice based on restitution (see Van Ness, 1993, p.258; also Schmid, 2001, p.5).

² See, for example, Bazemore & Umbreit, 1995, p.303; Dhyrberg, 1995, p.135; Wachtel, 1997, p.61.

group conference can be an extremely punishing experience for a young person and their supportive others³ (Daly, 1999, p.10; Barton, 2000, p.1, 21).

Nevertheless, the retributive/restorative contrast can serve a useful purpose in emphasising the general principles of a restorative approach (Condliffe, 1998, p.145). In practice, these commonly manifest as

a mediated dialogue between crime victims and offenders (most often juveniles), which focuses on how the crime influenced those affected, usually resulting in a plan for compensating the victim (Umbreit, 1999, p.213).

Within such practices there is great diversity (Bazemore & Walgrave, 1999, p.47-8; Daly & Hayes, 2001, p.2). Many writers⁴, however, have found Marshall's (1996) definition satisfactory:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future (p.37).

In 'all the parties' Marshall includes victims' and offenders' families and "any other members of their respective communities who may be affected, or who may be able to contribute to the prevention of a recurrence" (1996, p.37). This definition is thus particularly useful in an Australasian context where conferencing is the prevailing model.

In lieu, then, of a single, universal meaning by which restorative justice may be accurately and wholly described, it can be said to encompass various aims: to restore social bonds, between the individuals brought together by the offence and within communities or neighbourhoods; to provide reparation and/or restitution for those harmed; to enable offenders to take responsibility and make amends (symbolically and physically) for their actions; to re-

³ Through, for example, group censure of the offence, disapproval of the offending behaviour, or the offender's acknowledgement of their wrongdoing and its impact on others. As Walgrave suggests, however, this element of "added hardship is not an end as such, but a side-effect", by which he differentiates "penal law" from a restorative justice paradigm (1999, p.187)

⁴ See, for instance, Daly, 2002, p.6; Daly & Hayes, 2001, p.2; Immarigeon, 1999, p.306; Schmid, 2001, p.6; Strang, 2000, p.23.

establish autonomy or ‘re-empower’ victims (Cavadino & Dignan, 1997, p.245); and, by encouraging the active participation of victims and offenders in the resolution process, to restore dominion for all involved (Braithwaite & Pettit, 1990; Cunneen & White, 1995, p.63; Walgrave, 1999, p.145).

1.3 Conferencing in Australia

1.3.1 The development of conferencing

Conferencing is a restorative justice practice distinguished by its recognition and engagement of the wider community affected by crime (Condliffe, 1998, p.141). This mode of decision-making — largely inspired by New Zealand’s family group conferencing⁵ — has developed in Australia since the 1990s, and is gaining currency in various jurisdictions around the world⁶ (Markiewicz, 1997a, p.5; Condliffe, 1998, p.142; Strang, 2000, p.25; Daly, 2001, p.7; Daly & Hayes, 2001, p.2; Mirsky, 2003, p.1). Used in schools and in family welfare and child protection cases⁷, conferencing has been adopted widely in a justice context, most often with young offenders (Condliffe, 1998, p.141; Strang, 2000, p.27-8; Mirsky, 2003, p.1).

In Australia, such schemes are variously labelled: ‘diversionary conferences’ in the Australian Capital Territory (ACT); ‘family group conferences’ in South Australia (SA); ‘youth justice conferences’ in New South Wales (NSW); and ‘community accountability conferencing’ in Queensland, for example. Typically, a conference involves the victim/s of a crime (or their representative/s), the offender (who has admitted the offence), their respective supporters (family, significant others and/or community members), a police officer, legal representative and a conference facilitator, meeting to discuss the offence and its consequences and to formulate a

⁵ In New Zealand, family group conferencing arose out of a combination of political concern about how to best deal with family welfare issues, and pressure from Maori groups seeking greater input into decision-making processes affecting their people (Daly, 2001, p.4). These concurrent forces culminated in the *Children, Young Persons and Their Families Act 1989*, which framed principles of family (or *whanau*), clan (or *hapu*) and tribal (or *iwi*) involvement in welfare and justice processes, within a setting that laid emphasis on cultural appropriateness and relevance (Maxwell & Morris, 1994, p.17; Morris and Maxwell, 1998, p.5).

⁶ In the United States, Canada, South Africa, England, Ireland and Wales, for example.

⁷ See, for example, Mirsky, 2003; Pennell & Burford, 1994.

reparation plan (Maxwell & Morris, 1994, p.18; Wundersitz, 1994, p.96; Tauri & Morris, 1997, p.163-4; Daly & Hayes, 2001, p.2).

While there is great inter- and intra-jurisdictional diversity in practice⁸, there is a shared focus on restitution, making young offenders accountable, problem-solving through dialogue, family/community participation in consensus decision-making, strengthening families, reducing offenders' further contact with the juvenile justice system, and the active involvement of victims and offenders in the justice process (Maxwell & Morris, 1994, p.19; Belgrave, 1996, s.3.2; Condliffe, 1998, p.144).

1.3.2 Conferencing in Victoria

In April 1995, the Juvenile Justice Group Conferencing Pilot Project was initiated by the Mission to St James and St John⁹ together with a steering committee¹⁰ (Markiewicz, 1997a, p.36). This program evolved into the present model, whose stated objective is:

To address the offending behaviour of the young person and divert the young person from further/more serious offending by:

- strengthening the family and community around the young person to deal more effectively with the factors contributing to the offending;
- making amends to victims, where appropriate;
- holding the young person accountable for the impact of the offending (Anglicare, 2002, p.1).

Conferencing in Victoria is unique in two ways: it is operated by a community organisation (Anglicare Victoria¹¹), and is used solely at the pre-sentence stage¹² (Daly, 2000a, p.1). The program targets young (mainly first-time)

⁸ See appendix 1.

⁹ The Mission to St James and St John was subsumed into Anglicare Victoria in 1998.

¹⁰ The steering committee comprised: the Children's Court of Victoria; Victoria Police; the Legal Aid Commission; and the (then) Department of Health and Community Services (now the Department of Human Services), Juvenile Justice Branch (Markiewicz, 1997a, p.36).

¹¹ Anglicare subsequently lost the tender for the program, however, and from July 1st, 2003, it was transferred to another community agency, the Brosnan Centre, within Jesuit Social Services.

¹² Other states (Queensland and New South Wales) also use pre-sentence conferencing; however their main priority is on diversion from court (Daly, 2000a, p.2).

offenders¹³, at risk of being placed on a supervision order, who plead guilty, and who are willing to participate in a conference. Referrals are taken from Children's Court magistrates¹⁴ across the Melbourne metropolitan area¹⁵. All except sexual offences are dealt with. Sentencing is deferred for a period¹⁶ during which a conference is convened, the outcomes of which are submitted to the court and taken into account by the sentencing magistrate. While the program lacks specific legislative provision, sections of the *Children and Young Persons Act 1989* support its operation¹⁷.

Philosophically, the model emulates the offender-centredness of New Zealand practice¹⁸ (Morris & Maxwell, 1998, p.7; Anglicare, 2002, p.2). It also advocates restorative justice principles: offender accountability and reparation; expressing the human impact of crime; active participation of those affected; the central role of family decision-making; and the non-directive function of the convenor (Anglicare, 2002, p.6,17-18). Apparent, too, are elements of Braithwaite's (1989) reintegrative shaming theory, as two preconditions reveal:

- A sense of mutual belonging or interdependency between the offender and those expressing their disapproval of the offence;
- Countering the inevitable stigma attached to offending by equally strong efforts at reintegrating (restoring) the offender and enhancing self-esteem. (Anglicare, 2002, p.6).

Victorian implementation has been tentative and dogged by low referral rates (Markiewicz, 1997a, p.40). For instance, between September 2000¹⁹ and June 2003, the Anglicare program had an annual target of 50 conferences — small

¹³ In accordance with the *Children and Young Persons Act 1989*, young offenders are aged 10 to 17, have pleaded and been found guilty of an offence by a children's court.

¹⁴ As of September 2004, Children's Court Magistrates are known as Judges; at the time of the study, however, the title of Magistrate was applicable.

¹⁵ From Broadmeadows, Dandenong, Frankston, Preston, Ringwood, Sunshine, and Werribee Magistrate's Courts, and the Melbourne Children's Court; the referral process is detailed in appendix 3.

¹⁶ In practice this period is around eight weeks.

¹⁷ Most relevant are s.25 (1), s.26 (1), s.136 (b), s.138, s.139 (1), s.144 (3) (d), s.151, s.190 and s.191 (Anglicare, 2002, p.4).

¹⁸ See appendix 3 for details of the model, including its referral and assessment procedures.

¹⁹ The program was managed by Anglicare Southern region until September 2000 at which point it was transferred to the Western office (information supplied by Anglicare, in email 9/7/03).

when compared with numbers in other states²⁰ (Daly, 2000a, p.2; Daly and Hayes, 2001, p.3). Whether this has been due to a lack of political support, or insufficient awareness of restorative practices is unclear. A scan of the evolution of conferencing in this state, though, reveals a consistent pattern (see appendix 2). Victoria's track record signals little success besides apparently high levels of participant satisfaction (VLRC, 1996, s.6.67). This is not unique; a similar pattern emerges in the United States, Sweden and Britain²¹ (Mirsky, 2003, p.9-10).

Nevertheless, advantages of a court-based pre-sentence model are acknowledged. The Victorian Law Reform Committee (1996) notes, for example, the clear referral process; diminished potential for inequity; less pressure on young offenders; and reduced net-widening. Also, lower outcome disparity; greater compliance with agreements (through consensus decision-making); and the fact that existing legislation provides an appropriate statutory framework (VLRC, 1996, s.6.69, s.6.113). The issue of confidentiality is highlighted, moreover, as requiring some form of legislative protection, an important concern which remains unaddressed a decade later²².

Victoria's conferencing model is shaped, then, by its theoretical roots and by having evolved in response to a particular political, legal and structural environment. This is marked by two prominent features: a lack of specific legislative provision; and the positioning of the program within the juvenile justice structure, alongside diversionary strategies such as police cautioning yet outside the government sphere. This context has determined the scope of

²⁰ Over 1500 a year in South Australia, 2000 in New South Wales, 1000 in Western Australia, and about 200 in the ACT and Queensland, for example (Daly, 2000a, p.2; Daly and Hayes, 2001, p.3).

²¹ In these countries, problems such as low referrals, partnerships between government and non-government bodies foundering, funding issues and a lack of legislative backing, have — often despite the enthusiasm of participants and program coordinators — led to projects' demise (Mirsky, 2003, p.9-10).

²² While section 26(1) of the *Children and Young Persons Act 1989* provides for restrictions on publication, and thus some protection of the confidentiality of conference proceedings, there is no specific legislative protection in this regard. Though it is stated at the beginning of a conference that what is said is to remain confidential, apart from what is to be included in the convenor's report to the magistrate, there is no means of enforcing this or of protecting young people from incriminating themselves or other people. As lawyers have pointed out to convenors, police would be legally entitled to investigate and arrest someone for activities alleged during the course of a conference, a risk of which participants are not made aware. A legislative framework could formalise guidelines for conference procedures and the protection of rights for conference participants. In lieu of this, Anglicare Gippsland (having won the tender in 2003 to run a three year program in that region) has developed a pro forma document for participants to sign to clarify this issue of confidentiality (information supplied by Anglicare, meeting 7/3/03).

conferencing as a pre-sentence option, and limited the range of its target population.

While this narrow focus has allowed a concentration of resources — in intensive preparation and follow-up²³ — not afforded by other models, the sustainability of such an individualised approach has given rise to recurrent funding issues²⁴. As Bargen notes (1996, in Markiewicz, 1997a, p.14), the considerable human, temporal and financial resources that this style of implementation demands have meant that group conferencing in Victoria has struggled to maintain political appeal on the grounds of economic viability.

1.4 Bounds — scope and setting

1.4.1 The scope of the study

The scope of this research is limited to the practice of group conferencing with juvenile offenders, in Victoria, during a three year period. The particular focus — the role of the offender's family in the conference process — delimits its study of participants' experience and perceptions. The research comprises a small sample — seven young people and their conference supports, program staff and other key stakeholders — with the purpose of gaining in-depth qualitative data, using observation, a focus group and interviews.

1.4.2 The research setting

The setting for this research was the Juvenile Justice Group Conferencing program run by Anglicare Victoria from its Western Regional office, from 2000 to 2003. During that time around ninety²⁵ conferences were convened, of which seven were observed by the researcher. The young people and their supportive others who participated in these meetings comprised the sample, with whom in-depth interviews were conducted; program personnel and key

²³ Between 20 and 30 hours is spent in preparation for each conference, then there is a three month follow-up period after each meeting (information provided in meeting with Anglicare staff, 23/4/01).

²⁴ Information provided by Anglicare staff in email, 9/7/2003.

²⁵ The total number of conferences convened from September 2000 to June 2003 is based on the researcher's estimate based on averages extrapolated in lieu of actual figures.

stakeholders were also interviewed and invited to participate in a focus group.

1.5 Bases — the grounds of the study

At the heart of this research is the desire to understand how group conferencing actually *works*, arising out of a perceived dearth in knowledge of the process from the ground up (Daly, 1998, p.2). What is the experience of young people and their family — kin and beyond — in this process? Little empirical data exists to explain specifically the role of the family in the process. Themes of family empowerment, family participation in decision-making processes, and sensitivity to familial and cultural context pervade much of the discussion surrounding conferencing and its aims (see, for example, Moore, 1992; Stewart, 1996; Wundersitz, 2000). Precisely how these elements of the process manifest, however, too often remains implicit.

1.5.1 Research aims

This study aims to examine the relationship between the theory and actual practice of conferencing from the perspective of its practitioners and participants. Furthermore, it seeks to understand the role of the offender's family (and supportive others) in the conference process²⁶. The answers to the questions posed are riddled with intangible elements that previous research has failed to elucidate. This study is an attempt to uncover those subtle, tacit levels of understanding and interaction which may well emerge as significant determinants of conference outcomes. The following factors combine to underscore the importance of such an exploration:

- Notwithstanding major studies — the RISE and SAJJ projects (Daly & Hayes, 2001, p.4) — detailed empirical data on conferencing in Australia are limited (Daly, 1998; Campbell, 2000, p.12; Hayes & Daly, 2003a, p.2; Hayes & Daly, 2003b, p.10-11).

²⁶ For example, during the conference, sharing information about the effects and impact of the offending behaviour on the family, and helping the offender devise an 'outcome plan'; then, after the conference, supporting the offender's compliance with the plan, and engendering 'reintegration' (Griffiths and Williams, group conference convenors, quoted by Baines, 1996, p.42).

- The effects of critical factors — family expectations, for instance — on offending behaviour and conference outcomes, merit further examination (Markiewicz, 1997a, p.25).
- Despite the pivotal function of family and supportive others in conferencing and offender reintegration, research on their role (such as Prichard, 2002) is limited. Empirical material is needed to build on theory (Schiff, 1999, p.334; Walgrave & Bazemore, 1999, p.381-3).

1.5.2 Research questions:

How does offenders' family support impinge upon group conferences and their outcomes?

From this question, at the heart of the research, emanates a range of themes: issues about relations between young people and their families, for example, and how these in turn relate to offending behaviour. These are incorporated in the following sub-questions:

- What role does the offender's family play during and after the conference?
- To what extent does the "success" of the conference hinge on the family dynamics, behaviour, background, and support of the offender?
- How is a conference's "success" defined in relation to the family of the offender?
- How does the notion of "reintegrative shaming" (Braithwaite, 1989) relate to the offender's family?
- How and when, if at all, does 'reintegration' of the offender take place?
- How do the family dynamics impinge upon this process of reintegration?

These questions shape the research process, described in chapter four.

1.5.3 Contribution to Knowledge

Previous research has concentrated largely on quantitative measurement of conference variables and outcomes. Beyond the reach of such approaches, however, is a depth of understanding about the human dimensions of the restorative process. Using a qualitative approach, this study set out to address this aspect and to contribute to knowledge about conferencing. It is to be emphasised that the aim of this research is not to assess the effectiveness of a conferencing approach. Rather it seeks to build some understanding of how the process functions in relation to young people and their social support networks, which hinge primarily on family relationships.

By analysing how conference success has been determined previously, the study aims to highlight the shortcomings of too narrow a focus in this regard, and the need to develop awareness of how the broader and long term social consequences of such processes manifest. Multifaceted, plural indicators of conference success are presented. The research examines the process of ‘re-engaging families with their young people’²⁷ through conferencing. Deeper understanding of the nexus between family support and the conference process paves the way for future research into restorative practices. In providing answers to the questions and developing insight into how conferencing actually works, the study aims to contribute knowledge to inform restorative policies and practices in Victoria and beyond.

1.6 Conclusion & Presentation of This Thesis

Conferencing hinges on family and community engagement. By exploring this process, the study seeks to understand the role of offenders’ family and other supports. The ensuing chapters explain how and why the study engages with this enquiry. Chapter two traces the ideological roots of restorative justice and

²⁷ Maxwell & Morris, 1994, in Alder & Wundersitz, p.42; see the present study’s title.

critically reviews relevant literature including the theory of reintegrative shaming. Chapter three builds a conceptual framework for the research, around four themes. Chapter four describes the research design and theoretical orientation, and methods used to collect and analyse data. The findings are presented, analysed and discussed in chapters five, six and seven. Chapter eight draws conclusions and explores implications.

CHAPTER TWO

Tracing Theories, Reviewing Research

2.0 Introduction

Chapters two and three locate the study within the wider field of scholarship. They provide, moreover, a conceptual framework to support the logic of the research — the rationale for its structure and methods. This chapter begins by tracing the historical and theoretical roots of restorative justice, as background to the development of conferencing. A critical review of research on conferencing, in and related to the Australian context, follows. This critique highlights important findings and insights as well as areas in which empirical knowledge is scant, elucidating how the present study will complement and contribute to existing knowledge. It also reflects on the ways in which the ‘success’ of conferences has been construed and measured in previous studies. A focus on bald reoffending rates, for example, belies less obvious outcomes and corollary benefits of conferencing for young people and their families; a more truthful gauge must consider multiple dimensions of the process. The chapter concludes with an assessment of the theory of reintegrative shaming (Braithwaite, 1989), with which the Victorian practice model is only partly infused, yet which has an implicit bearing on critical aspects of the conferencing process, signifying its relevance to the study.

2.1 The roots of restorative justice

Since the mid 1970s, justice systems around the world have been moving towards a restorative paradigm, embracing ‘informal’ remedies as either an alternative or a supplement to traditional sanctions (Messmer & Otto, 1992, p.1; Moore, 1992, p.203; Van Ness, 1993, p. 276; Bazemore & Umbreit, 1995, p.302; Strang, 2000, p.22). This shift has arisen out of concerns about the perceived shortcomings of a punitive, retributive system: for example, its failure to meet the needs of crime victims; the inefficacy of incarceration as a means of reducing crime; and the unnecessary criminalisation of young and

minor offenders (Hogg & Brown, 1985, p.400; Polk & Alder, 1986, p.315; Sandor, 1994, p.153; Lambrick, 1995, p.412; Bonta et al. 1998, p.2; Condliffe, 1998, p.140; Strang, 2000, p.22). Moreover, the recognised inadequacy of juvenile justice strategies, infused with a justice/welfare dichotomy, to address the problem of juvenile crime (Hogg & Brown, 1985, p.394; Maxwell & Morris, 1994, p.16; Wundersitz, 1994, p.88; Markiewicz, 1997a, p.16; Bazemore, 1999, p.156).

Our society's response to youth crime reflects an inherent uncertainty about 'what works': the demand for proportionate punishment, or 'just deserts', on one hand; and the view that young offenders require a primarily rehabilitative response, on the other. The coexistence of these competing paradigms – the 'justice' or 'punishment' model and the 'welfare' or 'treatment' approach – has characterised juvenile justice in Australia²⁸ to varying degrees since the 1970s (Alder and Polk, 1985, p.277; Murray and Borowski, 1986, p.177; Polk and Alder, 1986, p.315; Alder and Wundersitz, 1994, p.3; Naffine and Wundersitz, 1994, p.235; Bazemore and Umbreit, 1995, p.297; Wundersitz 2000, p.104; Cunneen and White, 2002, p.358; O'Connor & Chui, 2002, p.185-6).

A restorative approach to juvenile offending holds appeal for proponents of both arguments: the 'justice' lobby on one hand, because it emphasises offender accountability and addresses victims' needs for reparation; and the 'welfare' advocates on the other, to whom the rehabilitative and reintegrative potential, based on the strengthening of family and community supports, is clear (Alder & Wundersitz, 1994, p.7; Wundersitz, 2000, p.111; Burford in Mirsky, 2003, p.10). Yet as Daly (1998) points out, restorative justice has many histories; these concerns embody an array of philosophical and ideological perspectives.

Criminal justice systems are shaped by the currents of politics and ideology, and it is from wide-ranging streams of discourse and activism that trends towards retribution, restraint, rehabilitation, and latterly reintegration

²⁸ Developments in Australian juvenile justice trace a similar historical arc to other western democratic countries, including Great Britain, the United States, Canada, and New Zealand (Murray & Borowski, 1986, p.176). For a concise account of these trends, see Wundersitz, 2000, p.103-4.

(Empey, 1978, in Murray, 1985, p.74) have gained impetus (Alder & Polk, 1985, p.278; Murray & Borowski, 1986, p.176; Braithwaite, 1992, p.35; Van Ness, 1993, p.257; Alder & Wundersitz, 1994, p.4-6; Naffine & Wundersitz, 1994, p.248; Bazemore & Umbreit, 1995, p.307-8; Daly, 1998, p.6; Wundersitz, 2000, p.109). These threads may be traced back to the women's, peace and civil rights movements of the 1960s and 70s (Bazemore & Umbreit, 1995, p.302; Bazemore & Walgrave, 1999, p.45). Several streams of social and political thought coalesced at this time to create conditions ripe for change. New ways of thinking about rights and human relationships took shape in various forms.

The abolitionist critique²⁹ of the criminogenic effects of the penal system, for instance, spearheaded one state-sponsored program to abolish aspects of the juvenile correctional system in Massachusetts in the early 1970s (Hogg & Brown, 1985, p.406). The recognition of crime victims' entitlement to compensation³⁰ was manifest in the increased use of restitution as a sanction from the late 1970s (Schneider, 1986, p.533). The development of feminist³¹ and equity theories informed the rise of informal justice³² and alternative dispute resolution processes (Bazemore & Umbreit, 1995, p.302; Daly, 1998, p.6), linking notions of group decision-making and community involvement to mediation principles³³. Community based activism³⁴ was a further catalyst for change, as in New Zealand, for example (Braithwaite, 1992, p.36; Pennell & Burford, 1994, p.3; Daly, 2001, p.4).

Against this social and political backdrop, contemporary restorative practices evolved from early victim-offender mediation schemes developed in Canada and North America. The first of these was established in Kitchener, Ontario, in 1974³⁵ (Fisher, 1993, p.125; Bonta et al. 1998, p.2). Reportedly the original VORP³⁶, this program was initiated and supported by members of a

²⁹ See Barnett & Hagel, 1977, in Van Ness, 1993, p.262; also Mathiesen, 1974, in Daly, 1998, p.6.

³⁰ See Schafer, 1968, 1970, in Weitekamp, 1999, p.91.

³¹ See, for example, Harris, 1987, in Van Ness, 1993, p.257.

³² See, for example, Danzig, 1973.

³³ See, for example, Anleu, 1995; Boule, 1996.

³⁴ See, for example, Buckley, 1974, in Van Ness, 1993, p. 257.

³⁵ For details of that scheme see Peachey, "The Kitchener Experiment", in Wright & Galaway, 1989, pp.221-235.

³⁶ Victim Offender Reconciliation Program.

Mennonite congregation, whose Anabaptist Christian faith emphasises a strong commitment to community, and civilian efforts towards peace and social justice³⁷. Today's Mennonite-based programs are anchored in principles of exchange and dialogue (Daly, 1998, p.4), and promote a discourse of 'justice as healing' (Umbreit, 1985; Zehr, 1990; Consedine, 1995).

Restorative justice principles may thus be linked to religious tenets (Bazemore, 1998; Consedine, 1999), which, Marshall suggests (1995, p.36), may be off-putting to others who do not share the same world view. Some cross-cultural analysts tie current restorative practices to indigenous dispute resolution processes emphasising apology, reconciliation and forgiveness (Martin in Fisher, 1993, p.126; Consedine, 1995, p.12; Dhyrberg, 1995, p.134; Weitekamp, 1999, p.93). Historical links, too, are drawn with ancient Hebrew, Roman, Middle Eastern and Germanic codes of justice, for instance, and with contemporary Japanese ways of maintaining social harmony (Van Ness, 1993, p.253-5; Braithwaite, 1999, p.1; Weitekamp 1999, p.84).

Moreover, restorative justice principles have been described as original notions from which, through history, modern justice systems have become disconnected, and to which in recent times we are returning (Braithwaite, 1999, p.1; Weitekamp, 1999, p.93). Yet to imply a direct lineage between historical or indigenous traditions and current restorative practices risks a naïve interpretation, for as Abel (1982) points out, "the characteristics of informal justice in pre-capitalist societies ... cannot be recreated under Western capitalism"³⁸ (in Daly, 2001, p.9). Further, such interpretations serve to mythologise notions of restorative justice in a way that can obfuscate the history, meaning and context of earlier and non-Western practices³⁹, comprising what Blagg describes as an ethnocentric, "Orientalist" discourse (Blagg, 1997, p.483; Daly, 2002, p.15-16).

Nonetheless, such comparative justice systems can be seen to hinge on very different assumptions about the nature of social conflict and a society's

³⁷ See: www.mennonites.org/mennos/index.html (accessed 6/1/03).

³⁸ See, for example, Tauri and Morris, 1997, p.154-5.

³⁹ For example, As Tauri and Morris note, while traditional Maori justice practices were aimed at "the restoration of communal harmony", Maori justice "could also be punitive and unforgiving" (1997, p.153).

response to crime. In fact many contemporary restorative justice proponents maintain that modern criminal justice systems represent the theft by the state of conflicts between individuals, that ought rightly to be resolved by those most directly affected. This idea can be traced to Christie (1977), who argued that conflicts “ought to be used, and become useful, for those originally involved in the conflict” (p.1). Further, “that conflicts represent a *potential for activity, for participation*” (p.7), whereby he raises the notion of civic engagement — the involvement of citizens in processes that are of critical importance to them. When conflicts are usurped by the state and by professionals (such as lawyers), Christie contends, society loses in several significant ways. Lost are pedagogical possibilities, opportunities for norm clarification, and victims’ and offenders’ chance to dispel anxiety and misconceptions about the crime (1977, p.8). These themes are further considered in chapter three.

2.2 Reviewing the research on conferencing

Since the present study is focused on conferencing in Victoria, it is tied most closely to other studies of conferencing in Australia. Major research carried out in New Zealand, however, has influenced the Australian experience and is therefore equally important to note. The work of Maxwell and Morris (1993) is significant in being the earliest study of conferencing (beginning in 1990) and the most extensive for at least a decade after. The study⁴⁰ tracked the experience of nearly 700 young people who had committed offences, more than two hundred of whom participated in family group conferences (FGCs). Observation of FGCs was followed by interviews with participants, including 157 young offenders and 176 of their parents. Over 80% of all participants except victims reported ‘satisfaction’ with the conference outcome, though as the authors note (1993, p.116) and Daly points out (2001, p.15), the meaning of ‘satisfied’ in this context is not articulated.

⁴⁰ This research aimed to describe the conference process, scrutinise how administrative decisions were made, and assess the extent to which the goals of the *Children, Young Persons and Their Families Act 1989* had been achieved (Maxwell & Morris, 1993).

Maxwell and Morris (1996) also report on the reoffending rates of 193 of the young people who had participated in FGCs in the earlier study. Despite a lack of comparable data on juvenile reoffending, the authors conclude that four years later “the recidivism rate of the family group conference sample is certainly no worse”⁴¹ (1996, p.106). Noteworthy are the factors identified as “predictive of both reoffending and persistent offending” (p.106). Reoffenders were more likely to have committed a higher number of initial offences, to have had an offending history prior to the conference, to have been older at the time of the conference, and to have been Maori (1996, p.107). Interestingly, too, aspects of the conference process were found to be predictive of recidivism. Regression analysis suggested reoffenders were less likely to have apologised for their actions, least likely to have fulfilled conference agreements, and their victims reported the lowest levels of satisfaction with the process. As Maxwell and Morris conclude, in line with other studies that suggest offence history and custodial sentences strongly predict recidivism,

[t]hese findings hint at the possibility restorative justice outcomes may actually reduce the chances of reoffending (1996, p.107).

Maxwell and Morris (2002) found that participants were less likely to reoffend than comparative samples of others who had committed similar offences. They warn, however, against relying on reoffending rates alone to indicate the success or otherwise of FGCs. Recidivism may occur, for instance, without being detected; similarly, other factors beyond the ambit of the conferencing process may give rise to offending behaviour (Maxwell & Morris, 1994, p.38; 1996, p.106). They suggest additional measures of success, such as the completion of the tasks agreed to in the FGC, and how often FGCs are reconvened⁴². Certainly, Maxwell and Morris judge that young offenders are being made accountable, parents and extended families are getting involved in decision-making and support for their young people, and participants are

⁴¹ 42% of the FGC group had not reoffended (Maxwell & Morris, 1996, p.106).

⁴² From the 1990 sample, tasks remained uncompleted in only 13% of the FGCs, and only 18% of FGCs were reconvened within three to four months of the original meeting (Maxwell & Morris, 1994, p.38).

generally satisfied with family group conference outcomes (1994, p.25-41; 1996, p.108; 1998, p.6-9).

Victoria's conferencing program has been subject to evaluation by two independent consultants. The first study (Markiewicz, 1997) was conducted in two phases. Phase one focuses on the first two years of the program, tracing the progress of participants in 40 conferences between April 1995 and March 1997. The report assesses conference preparation, characteristics and follow-up in terms of perceptions of the process, implementation of outcome plans, and reoffending patterns. Methods included observation of 15 conferences, and meetings, interviews and focus groups with key stakeholders.

Markiewicz (1997a) found that offenders' family members largely found the process beneficial, though a proportion were sceptical about its impact on the young person's offending behaviour (p.60). Further, the "young people did not appear to feel unduly blamed in the conference", nor did they regret participating (1997a, p.viii). Conference plans were fully implemented in thirty per cent of cases, partially in nearly half, and not at all in the remainder of the sample⁴³ (Markiewicz, 1997b, p.58). While the small sample precludes generalisation⁴⁴, Markiewicz concedes problems with the use of recidivism as an index of conference success. Furthermore, she acknowledges access issues that created difficulties around the observation of conferences and the follow-up of participants and outcomes, as well as in relation to the small number of referrals to the program⁴⁵.

The second phase of the study (1997b) follows the sample to determine any reoffending in the twelve month period after each conference, and compares this sample with a group of young people on probation orders, yet with similar characteristics in terms of age, gender and offending history. Markiewicz reports, "there is not a substantial difference" in reoffending rates of the two

⁴³ Markiewicz observes that plans were least likely to be implemented when the young people had committed a serious reoffence and returned to court to receive a higher penalty (1997a, p.108).

⁴⁴ At the end of phase one reoffending rates were only available for seventeen of the young people – "too few for us to draw any conclusions" (Markiewicz, 1997a, p.119).

⁴⁵ "The methodology initially developed was based on the investigation of an estimated 100-120 conferences, and adopted a quantitative approach to data analysis. When only 40 conferences were held during the period of the pilot project, mixed methods had to be adopted" (Markiewicz, 1997a, p.40).

groups, both showing a high rate of recidivism (1997b, p.33). Phase two then evaluates the program between 1st April and 30th September 1997, during which time 19 conferences were held. The findings reveal a higher rate of conference plan implementation (90% were fully or partially completed) and no proven recidivism in the six months after the conferences. Markiewicz concludes that the program improved over the second phase due to experience gained and refinements made after the first phase, suggesting “there is encouragement for further extension of the model” beyond its pilot status (1997b, p.78).

Success Works’ (1999) evaluation endorsed this finding, recommending

that group conferencing be introduced as a mainstream option throughout Victoria (Success Works, 1999, p.68).

Focusing on the conferencing program’s cost effectiveness and its results in terms of recidivism, this study compared a group of young people on probation with a sample of 71 young people referred to conference. Police checks were used to trace reoffending among both groups over a twelve month period. In addition, post-conference interviews with participants and meetings with key stakeholders yielded qualitative data about satisfaction levels and conference outcomes. The findings reveal little difference in reoffending rates among the two groups, although the young people in the probation group committed a higher number of further offences and were sentenced to more supervisory orders per re-offence than those who attended conferences (Success Works, 1999, p.26). The costs associated with the conferencing and probation programs were found to be comparable (Success Works, 1999, p.61). While some organisational and systemic issues were identified as affecting “throughput” — the number of cases referred to and processed by the program — overall the results indicated “positives for young people, families and victims” (Success Works, 1999, p.63-5).

Success Works (1999), most notably, identifies the following as determining conference success: the degree of the young person’s consent, interest and motivation; the support and involvement of committed others; and a social

network around the young person (p.27). Factors indicating an ‘unsuccessful’ conference include “negative family relationships”, no “significant supports”, an incorrigible peer group, immaturity, cognitive difficulties, a lack of connection to school or employment opportunities, and a strong offending history (p.28). Family and community “re-connection”⁴⁶ is characterised in terms of a ‘successful achievement’ resulting from conference participation, hinting at longer term benefits of the process (Success Works, 1999, p.29).

The study’s focus on cost-benefit and recidivism does not allow qualitative exploration or analysis of these factors, as the authors acknowledge (1999, p.5). Since the reoffending patterns of conference-goers and probationers depict no great disparity, however, it is suggested that any decisions about the viability or preferability of conferencing as a program

may need to be made on criteria other than the ability of the intervention to impact upon recidivism (Success Works, 1999, p.30).

This highlights a common thread in the research considered thus far: the inadequacy of using bald reoffending rates to gauge a program’s success.

In New South Wales, the Wagga Wagga conferencing program was evaluated in 1992 by researchers⁴⁷ who found that

young people and their families who were involved in ... conferences found them to be positive, effective, and an appropriate way of dealing with [a juvenile’s] first offence (Dymond et al. 1992, in Moore & O’Connell, 1994, p.25).

And further, that,

many families ... perceived real behavioural changes in their children (Dymond et al. 1992, in Moore & O’Connell, 1994, p.25).

⁴⁶ Consistent with the literature surrounding risk and protective factors; see discussion at 3.4.1.

⁴⁷ Dymond, K., Jamieson, J., Coates, B. & Couling, N. 1992 (unpublished), “Report on Young Offenders who have been subject to the Wagga Wagga police cautioning process, Wagga Wagga”, School of Humanities & Social Sciences, Charles Sturt University, Riverina (in Moore & O’Connell, 1994).

A second, larger evaluation of the Wagga scheme began in 1993, comprising quantitative analysis of reoffending rates over a nine month period, using for comparative purposes a data set of 693 young people processed in the two years before and after the launch of the conferencing program (Moore et al. 1995). Moore found that, following the introduction of conferences, the number of young people appearing in court decreased from around half all cases processed and the number cautioned by police increased:

After the introduction of the FGC program 72% of juveniles were cautioned at the point of their initial apprehension and only approximately 28% were placed before the courts (Moore et al. 1995, p.25).

Further, as well as “an apparent decreasing trend in the overall reapprehension rate” (Moore et al. 1995, p.32), an increase in the proportion of young people appearing before court and then being ‘reapprehended’ was noted, suggesting that the nature of the initial processing may be predictive of future ‘reapprehension’. This result is echoed in subsequent research highlighting how elements of the conference process and offender characteristics may predict reoffending (Maxwell and Morris, 1996; Hayes & Daly, 2003).

Moore’s study also included a qualitative component, gauging participant satisfaction levels by observing fourteen conferences and interviewing twenty-two participants. While satisfaction with the process was found to be high, the small sample limits the usefulness of this finding. More recently in New South Wales, however, Trimboli (2000) surveyed 969 victims, offenders and offenders’ supporters to assess their perceptions of procedural fairness and satisfaction with conference outcomes, as well as their prior knowledge and expectations of the process and their opinions of its best and worst aspects. Trimboli reports high levels of perceived fairness and satisfaction among participants⁴⁸. At the University of NSW a three-year review of the NSW *Young Offenders Act 1997* is examining aspects of the conferencing program

⁴⁸ For example, Trimboli found that 95% of offenders and 97% of victims felt that offenders were treated fairly, and that 90% of offenders and 79% of victims were satisfied with how their case was handled by the process (in Hayes & Daly, 2003a, p.2).

including compliance with the legislation, participant satisfaction, equity and its breadth of application (Daly, 2001, p.26; Luke & Lind, 2002, p.1).

In Canberra, the Reintegrative Shaming Experiments (RISE), from 1995 to 2000, compared the effects of standard court processing with those of diversionary conferences across four offence categories⁴⁹. The significance of this research lies in its randomised design⁵⁰ and the testing of Braithwaite's theory of reintegrative shaming. While much of the data is still to be analysed, the researchers report that victims and offenders consistently find conferences more procedurally fair than court (Sherman et al. 1998; Strang et al. 1999; Sherman et al. 2000, p.5).

Similar results emerge from studies in Queensland, Western Australia and South Australia. Palk, Hayes and Prenzler (1998) evaluated Queensland's community conferencing pilot program, analysing quantitative survey data collected from program participants, together with stakeholder interviews and data on cautioning, arrest and court appearance. Of 454 participants in 76 conferences, the researchers found that over 98% felt that the process was fair and were satisfied with conference agreements (1998, p.145). A rate of 93% compliance with outcome plans was reported, and a low re-offence rate of 7%, though since this latter rate was based on a non-standardised follow-up period, its reliability is limited, as the authors concede (p.151). They conclude, however, that

reducing levels of recidivism should be viewed as only one of several positive program outcomes (Palk et al. 1998, p.152),

a point made particularly salient in light of the uncertain nature of the link between conferencing and recidivism (Hayes and Daly, 2003a, p.20).

In Western Australia, an external evaluation of the court conferencing program and the *Young Offenders Act 1994* also yielded positive feedback of

⁴⁹ Drink driving by adult offenders, violent offences by offenders under 30, juvenile property offences with personal victims, and juvenile shoplifting offences (Sherman et al. 2000, p.4).

⁵⁰ Of 900 drink driving offences, 300 juvenile property offences, and 100 violent offences, half of each group were randomly assigned to a conference and half to court. RISE is the only such controlled, randomised study of conferencing in Australia (Daly, 2001, p.18).

participants' satisfaction and perceived fairness of the process (Cant and Downie, 1998). The researchers interviewed 265 offenders, parents and victims involved in conferences between 1996 and 1997. The data indicated 96 percent of outcome plans were completed and over 90 percent of participants reported feeling satisfied with how their cases were dealt with (though slightly fewer victims expressed satisfaction — 83 per cent compared to 90 to 92 per cent of offenders and their families) (Cant & Downie, 1998, in Success Works, 1999, p.49; also Daly, 2001, p.16-17).

The South Australian Juvenile Justice (SAJJ) research on conferencing focuses on the experience of “restorativeness” and “democratic process” for conference participants (Daly et al. 1998). Its attempt to measure the restorative element of the process makes this study unique and particularly worthy of note. Following the observation of 89 conferences, police and conference co-ordinators were surveyed and young offenders and victims were interviewed — then and again twelve months later. While as in the earlier reported studies SAJJ finds high levels of procedural fairness reported (80 to 95%), the levels of perceived “restorativeness” are relatively low, at around one third to half of the conferences (Daly, 2001, p.21). Measures of this factor focus on the extent to which offenders and victims each “recognised the other and were affected by the other”, as well as the degree of “positive movement or mutual understanding” between the parties in the conference (Daly, 2001, p.22; 2002, p.5). Whilst the validity of these measures is underscored by aspects of the research design (such as the triangulation of data collection methods), the question of reliability or transferability of the findings gives rise to the issue of context — the research setting — which needs to be examined.

In the SAJJ sample, for instance, a third of offenders felt the conference was not important to them, half had not considered how they would respond to their victim, and only half felt affected by hearing the victim's story. After the conference, only half the victims had a better understanding of why the offence was committed, most felt the offender was not truly sorry, and a third still believed that the young person (rather than what they did) was innately bad. Daly (2001, p.22-3) qualifies this finding of low restorativeness in terms

of the limits on the interests of offenders and the capacity of victims to engage in restoration. It is thus implied that the ability of the conference process to engender restorative effects is constrained by such operative conditions. Whether these factors impinge on the process inevitably, or whether they arise in the specific context of the South Australian program, however, is not addressed⁵¹. Broader application of the SAJJ findings, then, would require the testing of its measures of restorativeness in a variety of settings, against the backdrop of different conferencing programs.

It is widely reported that participants experience conferences as fair in both procedure and outcome (see, for example, studies by Maxwell & Morris, 1993; Cant & Downie, 1998; Daly et al. 1998; Palk et al. 1998; Sherman et al. 2000; Trimboli, 2000, Daly, 2001, p.16; Daly, 2002, p.4; Hayes & Daly, 2003a, p.2; Hayes & Daly, 2003b, p.10). This result is important in light of empirical research that indicates

people who feel they have been treated fairly by the justice system are more likely to comply with the law in future (Sherman et al. 2000, p.5).

Studies show that aspects of the conference itself may be predictive of future offending — the level of remorse expressed or the degree of involvement in decision-making, for instance (Hayes & Daly, 2003a, p.21). Luke and Lind (2002) suggest a reduction of fifteen to twenty percent in the risk of conference participants re-offending, compared to post-court recidivism. This accords with overseas research findings that post-conferencing offending rates are either lower, less serious, or at least no worse than following court processes⁵² (Latimer, Dowden & Muise, 2001, p.14; Luke & Lind, 2002, p.2). Precisely what it is about conferences that produces such effects, however, is yet to be ascertained.

In sum, studies of conferencing in Australia and New Zealand evince common themes. Victims and offenders generally report high levels of satisfaction with

⁵¹ By contrast, for instance, in the context of the Victorian model in which convenors engage in more intensive pre-conference preparation, it would be less likely for a young person to participate in a conference without having already considered what they might say or do in response to the victim.

⁵² See, for example, studies by Nugent & Paddock, 1995; Bonta et al. 1998; Miers, 2001.

conference outcomes. Similarly widely recorded are participants' perceptions of processual and procedural fairness (see, for example, Hayes & Daly, 2003b, p.10). The need for more extensive qualitative investigation of the conference process is frequently expressed or implied (see, for example, Hayes & Daly, 2003a, p.22). Clearly apparent, moreover, are the shortcomings of recidivism as the key indicator of conference success.

2.3 Measuring the 'success' of conferences

Intuitively, in order to judge whether something 'works', we need to find out what it set out to achieve. The effectiveness and value of a program can only be measured once its intended outcomes or 'client objectives' have been identified (Patton, 1997, p.159). An outcome indicator, however, is just that — an indicator; and as Patton (1997, p.159) warns, indicators are inevitably approximations, imperfect and varying in their reliability and validity. The reason so many assessments of conferencing programs' 'success' focus on reoffending rates, for example, is that with resources constrained by economic and political imperatives, reliance on routinely collected data, such as police and court records of arrest and conviction, or information which can be gathered easily and quickly, becomes standard⁵³ (see Daly, 2001, p.27). The lack of resources is compounded by restrictions such as privacy and confidentiality, which further limit the accessibility of a complete and accurate picture of the long term effects of the conferencing process on its participants.

Hence, as indicated, research to date has focused mainly on participants' perceptions of fairness, victim satisfaction, and recidivism as measures of conference 'success' (Markiewicz, 1997a, p.25; Daly & Hayes, 2001, p.4). Certainly, if these indicators correspond to the stated goals of a program, then they are valid measures; for example, according to Palk, Hayes and Prenzler (1998) the Queensland pilot program was,

shown to be successful with regard to the core goal of victim-offender

⁵³ As Daly attests, "[g]overnment-sponsored evaluations of conferencing, which are carried out quickly to suit ministers or department heads, often lack empirical depth and theoretical grounding" (2001, p.27).

reparation. Participant satisfaction levels in many cases were above common international standards of best practice (p.152).

And undoubtedly, as those authors point out, “an initiative that is not endorsed or legitimised by its participants is unlikely to be successful” (p.152). It must be remembered, too, that participants in conferencing programs include the judicial and legal personnel and organisations functioning around such justice processes — for conferencing is, after all, primarily a justice intervention. From this perspective, if it works, it means fewer young people entering the justice system; what clearer indicator could there be than rates of reoffence and reapprehension?

Markiewicz identifies several issues, however, which “serve to cloud the correlation between re-offending patterns and conference outcomes” (1997a, p.25). These include: confusion over how to measure whether conference participation reduces the likelihood of reoffending; inadequate benchmarks to compare conference-goers with non-participants; and a lack of accurate assessment of other factors reducing offending (such as maturation). Further, whether curtailment of offending is as valid a measure as cessation, and whether it is valid to rely on reapprehension rates to accurately measure reoffending (or perhaps young offenders simply get better at not getting caught). And, importantly, whether other significant consequences emerge for young people and their families (Maxwell & Morris, 1996, p.106; Markiewicz, 1997a, p.25; Hayes & Daly, 2003b, p.7).

The positive outcome of demonstrably reducing the level and severity of re-offence — which, ostensibly, may be determined relatively simply and which holds immense appeal for policy makers and law enforcers — is thus revealed to be fraught with issues of precision, accuracy and reliability. What, then, of less tangible goals? Christie argues that recidivism ought to be the least significant indicator of the merit of a restorative approach⁵⁴, given the

⁵⁴ Christie goes even further in his support for restorative practices: “even if it were absolutely certain they had no effects on recidivism, maybe even if they had a negative effect. ...it is not much to lose.... We might as well react to crime according to what closely involved parties find is just” (1977, p.9).

profundity of “other, more general gains” (1977, p.9). According to Bazemore and Umbreit (1995), for example, success is gauged,

not by how much punishment was inflicted or treatment provided but by how much reparation, resolution, and reintegration was achieved⁵⁵ (p.305),

evoking the restorative ideal of “restoring dominion” to all those affected by a criminal offence (Braithwaite & Pettit, 1990; Braithwaite, 2002). Moreover, as Barton suggests,

the ultimate aim [of any criminal justice response] should be to help the parties achieve closure in terms of emotional conciliation and a feeling that the matter has been dealt with fairly, that justice has been done (Barton, 2000, p.17).

Lofty human ideals, indeed — yet in the real world where program funding is contingent upon specific results matching political ends, concrete figures of demonstrable outcomes are required. How then are the more subtle, often elusive effects to be gauged and shown to be of practical benefit?

In light of findings suggesting that perceptions of fair treatment are conducive to law abidance (Tyler, 1990; Barnes, 1999, in Sherman et al. 2000, p.5), evidence of the perceived fairness of conferences over court processes gains new significance. Yet the measurement of additional facets of the process — such as reparation, resolution, and reintegration — present the difficulties of standardisation, interpretation and reliability. Harris and Burton (1998), for instance, claim that reintegrative shaming can be observed with a high degree of reliability, their confidence founded on the results of measuring responses to the question “how much reintegrative shaming was expressed?” and items about “respect for the offender” and “disapproval of the act” (p.237-9). Their eight-point scale of measurement, however, appears limited in its ability to register or describe how these concepts actually manifest in the research setting, as Morris (2002, p.168) observes. Pre-coded observation schedules

⁵⁵ Braithwaite outlines a similar ideal: “A successful conference is one where the offenders are brought to experience remorse for the effects of their crimes and to understand that they can count on the continuing support, love and respect of their families and friends” (Braithwaite, 1992, p.37)

carry with them problems of interpretation (Scott & Usher, 1999, p.103), which weaken internal validity and inter-rater reliability, as Harris & Burton note (1998, p.238).

Moreover, notions of 'shame', 'respect' and 'disapproval' are sensed directly by the participants themselves. As such the subject lends itself more to qualitative investigation — one which can yield a more insightful description of the shaming experience, for example, within and beyond the conference setting. In fact, by adopting a quantitative approach to their study, Harris and Burton belie the deeply subjective experience of the people they are studying, sacrificing potentially rich and descriptive data for the sake of "highly reliable measurement", as they acknowledge (1998, p.239). It is claimed that by directing research efforts to the operationalisation and measurement of theoretical constructs, the first steps are being taken towards testing whether reintegrative shaming can reduce reoffending (Harris and Burton, 1998, p.239). Yet more useful might be efforts towards developing understanding of how theoretical concepts translate into practice and experience, and tapping into participants' own sense of what makes a conference a 'success' or otherwise (Hayes and Daly, 2003a, p.22).

Some studies have included as a measure of success the extent of fulfilment of conference plans or agreements (for example, Markiewicz, 1997; Cant & Downie, 1998; Palk, Hayes & Prenzler, 1998). Yet compliance with outcome plans may not reveal that much about the nature of the purported success. Implementation of plans, as Markiewicz attests,

is a rather crude measure, as some plans are a lot simpler and less involved than others, and some young people who do not implement conference plans are in the middle of some other life crisis (1997b, p.77).

In order for this indicator to be meaningful and useful, it needs to convey some understanding of the factors involved in the development of the conference plan, and how these vary in relation to the level of compliance. The procedural context, determined by particular program characteristics, must also be considered. Markiewicz's findings (1997) are illustrative: in phase one

she reports 77% full or partial implementation of plans, compared with 90% in phase two⁵⁶. These results point to experience and improvements in practice which impinged on the development and monitoring of outcome plans; increasingly, for example, plans comprised less formulaic, more meaningful commitments and hence were more likely to be completed (Markiewicz, 1997a, p.104; 1997b, pp.76-7). The links between program context and conference processes are analysed further (at 6.2.2).

2.4 Assessing the theory of Reintegrative Shaming

As a theoretical template, reintegrative shaming (Braithwaite, 1989) is often applied to restorative justice practices, particularly in Australia (Polk, 1994, p.124; White, 1994, p.181; Serventy, 1995, p.246). This implies a frequently erroneous assumption, however (Daly, 1998, 2001). As mentioned earlier, the police-facilitated model of conferencing practiced in New South Wales and the Australian Capital Territory is the only one that draws explicitly on Braithwaite's theory. In other jurisdictions, as Daly notes, "practitioners ... are more likely to say that reintegrative shaming is one of several theories structuring their practice" (Daly, 2001, p.7). In relation to the present study, its significance is implicit; rather than directly informing the practice of group conferencing in Victoria, the implications of a reintegrative shaming model are embedded in its precursive phases, the conference process and its outcomes. It is important, therefore, to examine various aspects of the theory to determine the extent of their relevance and applicability.

Key to the theory, for instance, are the concepts of interdependency — the participation of individuals in social networks of dependency — and communitarianism — a societal structure built on interdependencies which are characterised by a sense of mutual obligation and trust, and which have "symbolic significance" that transcends individual interests (Braithwaite, 1989, p.100). These principles underpin the engagement of family and community in consensual decision-making processes that aim to empower individuals to resolve their own conflicts and repair damaged social networks.

⁵⁶ That is, thirty one out of forty in the first group; sixteen out of eighteen in the second sample.

An example is engaging offenders' supportive others in the conference process, which, in Braithwaite's terms, serves to:

heighten communitarian obligations for informal social control among those present; ... enhance shaming in the eyes of reference groups, and secure practical commitments to reintegration from those same groups" (1989, p.173).

The extent to which the shaming element of the theory translates into practice, though, is limited by the Victorian program's overriding objective to support and strengthen the young offender's social network (Anglicare, 2002, p.1). Shaming, according to Braithwaite, describes

all social processes of expressing disapproval which have the intention or effect of invoking remorse... and/or condemnation by others (1989, p.100).

Certainly the elicitation of remorse may be seen to tally with the objective of "holding the young person accountable for the impact of the offending" (Anglicare, 2002, p.1), yet to invoke 'condemnation by others' is not so much a rationale for the program as a side-effect of the conference process. Thus, 'communitarian obligations' and the 'practical commitments to reintegration' emerge as the threads most directly linking reintegrative shaming theory to the Victorian model of conferencing.

Braithwaite's theory distinguishes between stigmatic and reintegrative shaming which weaken and strengthen, respectively, "the moral bonds between the offender and the community" (Sherman & Strang, 1997, p.146). Stigmatic shaming is characterised by persistent social disapproval of the act and the actor, who is assigned a "master status trait", such as 'criminal', which dominates all other characteristics (Braithwaite, 1989, p.55). In contrast, reintegrative shaming is characterised by disapproval of the act, not the person, "followed by gestures of reacceptance into the community", within a sustained relationship of respect (Braithwaite, 1989, p.55 & p.101). An essential element of this 'community' is the offender's family as the primary site of reintegration and possible behavioural change – "the people who care

about and respect them most” (Braithwaite, 1993, p.37). The links between Braithwaite’s theory and a labelling perspective are manifest; central to each analysis is the notion of stigmatisation and its potential for amplifying social discord.

Braithwaite (1989) describes stigmatisation as:

disintegrative shaming in which no effort is made to reconcile the offender with the community. The offender is outcast, her deviance is allowed to become a master status, degradation ceremonies are not followed by ceremonies to decertify deviance (p.101).

As this latter point indicates, both reintegrative shaming and labelling approaches recognise the critical importance of separating the deed from the doer, condemning the offending behaviour whilst allowing the individual responsible to be viewed in terms other than as the ‘offender’ – as son or daughter, brother or sister, friend or neighbour, for example. Symbolic interactions are conveyed via face to face communication between participants in the conference process. For instance, interactions symbolising those between the young person and wider society might be represented by exchanges with victims’ friends and family. Similarly, meeting with police and lawyers in a conference situation may represent a new and consensual way of interacting with the state, via the justice system. Through such interactions (both symbolic and face to face), which Braithwaite would describe as “ceremonies to decertify the offender as deviant” (1989, p.101), an opportunity is provided for the young person to be afforded a sense of belonging and a capacity for social agency⁵⁷.

Reintegrative shaming, then, is distinguished by two features: a finite period of shame which is “terminated by forgiveness”; and “efforts to maintain bonds of love and respect throughout the finite period of suffering shame” (Braithwaite, 1989, p.101). These would be difficult to achieve without the

⁵⁷ As, Braithwaite and Mugford write: “There are dynamic features to these ceremonies which emphasize agency and social freedom” (1994, p.157). See footnote 79 for definition of ‘agency’.

separation of the offence from the offender, since the 'criminal' label eclipses other facets of identity. As Marshall (1995, p.6) observes:

People who feel unfairly devalued and lacking respect, who feel cut off from mainstream society, are likely to have little respect for society, its laws and values. If community does not extend to such people, then informal control does not affect them, and restorative outcomes will not be possible (in Belgrave, 1996, s.2.3)

Moreover, the mutuality of the process is essential:

Reintegration ... implies reciprocity of action and responsibility. [It] requires mutual respect, mutual commitment, 'understanding intolerance for offending', inclusion and the offering of necessary supports and opportunities for responsible community participation (Salomone, 2003, p.7)

Yet how feasible is this ideal? Braithwaite himself acknowledges the "widespread view that communitarianism is a lost cause, a utopian plea" (1989, p.169). Further, the assumption that the process of shaming can be effectively managed remains unconvincing in the light of his advice that

[key] to the art of ensuring that shaming is reintegrative rather than stigmatising [is] to preserve the continuum of love even in the face of the conflict and to leaven shame with praise (Braithwaite, 1989, p.167).

In practical terms, the risks threaten to outweigh the promises, since as Braithwaite himself concedes, "many families and other institutions will shame incompetently" (1989, p.168). Prichard (2002) highlights the risk of shaming young offenders' parents which, he contends, risks harming the young people themselves. He challenges Braithwaite's idea that families to whom shame is directed

will often transmit the shame to the individual offender in a manner which is as reintegrative as possible (Braithwaite, 1989, p.83),

arguing that Braithwaite presents a "one-dimensional, ... optimistic,

construct” of shame⁵⁸ (2002, p.333).

Moreover, Prichard asserts, “he does not adequately recognise the tapestry of emotions which families, and in particular parents, might feel” (2002, p.332). These include embarrassment, guilt, and feeling “on trial” in a conference, as observations of 34 conferences in Tasmania indicated (Prichard, 2002, p.333-7). Such reactions, Prichard suggests, damage the confidence of parents who may already feel inadequate in their role, shaming them in a way that is stigmatising since it holds no promise of forgiveness at the end (according to Braithwaite’s definition: 1989, p.101). Further, that young people may suffer a loss of confidence and self-esteem by witnessing their parents shamed in this way, which is clearly antithetical to reintegrative and restorative aims. Prichard’s contentions, which raise some important challenges to Braithwaite’s theory, are supported by literature on the psychology of parental self-efficacy and his own qualitative observations.

White (1994) offers a critique of Braithwaite’s theory and its application on various grounds. These include: its “naïve” assumptions about the nature of society; the limited conception of crime and its causes; concerns with the role of police in the Wagga model of conferencing; and the risk of power imbalance and the potential for shaming as punishment (White, 1994, pp.181-190). Further, procedural concerns about the application of the theory in practice centre on issues of due process, confidentiality, and the expansion of state intervention in people’s lives (pp.190-2). White also points to the dangers of shaming when it extends to the families of young offenders, as well as raising concerns about skilled ‘management’ of the shaming technique, and fears for young people who lack the interdependencies required for successful reintegration (1994, p.192-4; also Polk, 1994, p.130-1).

Morris (2001) underscores some of these concerns about putting reintegrative shaming into practice, for instance:

Braithwaite suggests that the shame which matters most is not the shame of

⁵⁸ Sandor, too, warns: “Braithwaite’s (1993) optimistic characterisation of families as caring and respectful will too often not apply” (1994, p.159).

judges or police officers but the shame of the people we most care about. The problem here is ... [m]any of the examples of conferencing which have relied most heavily on Braithwaite's theory have been managed through the police (Morris, 2001, p.10).

She goes on to detail four problems associated with reintegrative shaming: its failure to tackle structural issues (see White, 1994); its dubious applicability to, say, Aboriginal culture (see Blagg, 1997); disparity between the intent to shame and the impact of shaming; and how it may be accurately measured (Morris, 2001, p.11). For example, in testing the reliability of observational measures of reintegration and shaming, Harris and Burton (1998, p.238) reveal "discrepancy in the observers' understanding and interpretation" of the concepts used. In light of such concerns, Morris warns it is premature to use reintegrative shaming theory to inform policy and practice (2001, p.12).

In research examining the reconvictions of young offenders who had participated in conferences in 1990/91, Maxwell and Morris (1999) showed that certain features correlated with young offenders not being reconvicted, including feeling remorse and not feeling shamed in the conference, and feeling good about themselves and their lives since. While these findings "confirm the constructive potential of remorse and the destructive potential of stigmatic shaming" (Morris, 2001, p.12), Maxwell and Morris could not say what triggered remorse. Morris suggests that it could be empathy — understanding the impact on victims — which triggers remorse rather than shaming (via disapproval), in which case the focus on shaming is misplaced. Instead, she argues, conferencing should centre on

processes which focus on the consequences of offending for others (for families and communities as well as for victims) (Morris, 2001, p.12).

Reintegrative shaming theory thus has doubt cast over its utility as a practical restorative mechanism. Certainly its elements and ideals may complement and provide a theoretical stimulus for various restorative practices, but it would appear that the technique of shaming is potentially fraught with peril and uncertainty. Despite Braithwaite and Mugford's assertion that "[t]raining

of coordinators should be kept simple, leaving them wide discretion to implement flexibly a few broad principles⁵⁹ (1994, p.167), it seems evident that the effective use of shaming to foster reintegration demands professional skill, training and experience. That is not to say, however, that the principle of reintegration is to be discounted; it is possible, after all, to actively pursue reintegrative practices that do not rely on shaming as their starting point.

Thinking critically about reintegration raises questions, such as:

in what sense does the ‘community’ exist? does it have resources to support the process of reintegration? (Stubbs in Alder & Baines, 1996, p.46).

and,

Do those young people, particularly those who are unemployed and homeless, actually have families and communities into which they can be reintegrated? If not, can such communities be created? (Wundersitz, 2000, p.115)

Polk (1994, p.130-1) raises the issue of families being targeted as a reintegrative site yet not having the structural supports available to ensure successful reintegration of their young people. White (2003, p. 151) echoes these concerns. Reintegration require connectedness to others, through collective engagement, which harks back to Braithwaite’s model of communitarianism — social relations structured around a web of mutual dependency and trust. Yet it is possible, as Polk (1998) suggests, that since conferencing processes are embedded within the justice system they remain within the compass of the coercive power of the state, thus delimiting the role and ability of the community to actively assume responsibility in the restorative and reintegrative process (Wundersitz, 2000, p.115).

2.5 Conclusion

The use of mostly quantitative methods in much of the research to date has limited the depth of data yielded and belied the intensely subjective nature of

⁵⁹ According to these authors, training should comprise “story-based ... methods that focus on a few core principles — empower the victim, respect and support the offender while condemning his act, engage the offender’s supporters” (Braithwaite & Mugford, 1994, p.167).

the process under scrutiny (see, for example, Harris & Burton, 1998; Palk, Pollard & Johnson, 1998). Most significantly, previous research highlights the need for further analysis of restorative processes; greater clarity of the desired outcomes and measures of conference 'success'; the examination of factors affecting young people and their offending (such as their family environment); and qualitative strategies that can capture the complex human context of conferencing processes and their outcomes (Maxwell & Morris, 1994, p.38; Markiewicz, 1997a, p.25; Schiff, 1999, p.345; Walgrave & Bazemore, 1999, p.382; Strang, 2000, p.26; Hayes & Daly, 2003a, p.22). This study sets out to address these challenges. Analysis of how conference success has been determined previously highlights the shortcomings of too narrow a focus in this regard; there is a need to capture more diverse perceptions of what a 'successful' conference means to the various participants.

The study aims to shed light on the sorts of factors which might influence young people and their future decisions, in particular the impact of family factors and the involvement of family in the conference process. The concept of reintegration emerges as a key aspect of this involvement; hence the theory of reintegrative shaming is critically reviewed and its applicability to the research context considered. The ensuing discussion of labelling highlights risks inherent in justice processes, particularly for young offenders receptive to the stigma associated with societal reactions to offending. Moreover, it illuminates the process by which the reactions of others impinge on young people, how they see themselves, and consequently how they behave in future. This interactionist perspective offers a critical standpoint from which to consider the implications of reintegrative shaming.

CHAPTER THREE

Constructing Concepts

3.0 Introduction

This chapter establishes a conceptual context for the research. In framing and exploring key concepts emanating from the discussion and review of literature above, theoretical links embedded in a restorative paradigm emerge. Four themes are articulated: the first focuses on the notion of labelling — closely linked to reintegrative shaming, and a theoretical keystone of youth justice policy and practice. Of particular concern is the susceptibility of young people to the stigmatising effects of labelling; social reactions to an individual's behaviour affect their self-concept and thus their future behaviour. The idea of young people's diversion from different points of the justice system stems from these principles.

The second conceptual category examines the notion of crime as conflict between individuals, damaging social relationships. Coupled with this idea is the assumption — at the heart of a restorative approach — that this harm may be repaired. In this analysis the nature of such conflict and its ensuing harm is considered, as are different ways of characterising victimisation. The third, proceeding from the notion of a wider circle of harm caused by crime, centres on the role of community in the justice process. Reflection on the nature of 'community' and its engagement in the restorative process reveals the symbolic function of the conference itself. In bringing together individuals affected by an offence, a 'community' is invoked for the purposes of imparting behavioural norms and expectations.

The fourth theme analyses how community and family function as sources of social control by fostering moral cohesion. The engagement of young people's social support networks, at the heart of the conference process, recognises that those most likely to influence the attitudes and behaviour of young people are those to whom they feel most connected. Factors relating to families, such as a

sense of ‘connectedness’, are canvassed and found to be of critical importance in influencing adolescent behaviour.

3.1 Labelling, stigma, diversion — social reactions to crime

From an interactionist⁶⁰ perspective (Cooley, 1902; Mead, 1934), which holds that the social world is constructed by its human participants in their everyday interactions, crime is viewed as a social process; deviance is defined by the social reaction to it (Haralambos, 1986, p.429; Vold & Bernard, 1986, p.277; Shoham & Hoffman, 1991, p.103; Cunneen & White, 1995, p.57). According to Mead (1917-18), a society’s response to crime may be characterised as one of two extremes. One views the ‘lawbreaker’ as the ‘enemy’, towards whom “hostility” gives rise to “retribution, repression, and exclusion”. The other embodies a “reconstructive attitude”, which focuses instead on “the causes of social and individual breakdown” and their repair (in Daly, 2002, p.9). While evoking contrasts often drawn between retributive and restorative models of justice⁶¹, Mead’s characterisation serves to highlight how different social reactions to deviance may be conceptualised. The nature of the reaction, in turn, has a bearing on the interactions between individuals by which attitudes and expectations about behaviour are conveyed and communicated.

Stemming from this interactionist view is the labelling perspective⁶², a keystone in the theoretical edifice surrounding much restorative justice practice. Rather than offering a theory of causation or an explanation of primary deviance (Shoham & Hoffman, 1991, p.119), labelling theorists focus on social reactions to crime — how ‘criminals’ are defined, how individuals react to such definitions and subsequently define themselves, and how this process shapes their behaviour (see Tannenbaum’s “dramatisation of evil”, 1938; Lemert, 1951, 1972; Becker, 1973). The labelling perspective may thus be

⁶⁰ A symbolic interactionist perspective also underpins the analysis of social control mechanisms; see discussion at 3.4. See also discussion of interactionism as theoretical framework for the research (at 4.2).

⁶¹ Mead’s characterisation offers a lens through which many restorative justice proponents view the world, which Daly argues tends to caricature traditional justice mechanisms as solely retributive (Daly, 2002, p.9); see earlier discussion of retributive/restorative contrast in Chapter One.

⁶² The theoretical roots of the labelling perspective may be traced to conflict theory as well as to symbolic interactionism. Since the theoretical basis of this study rests on an interactionist framework, however, issues of political and economic power inequity are not discussed. For a concise description of the theoretical origins of labelling theory, see Paternoster & Iovanni, 1989, p.361-3.

described as “an interactionist theory of deviance” (Becker, 1973, p.181). Despite criticism against it (discussed below), this perspective is an important plank in this study’s theoretical framework, since the implications of labelling are evident throughout juvenile justice policy and practices including conferencing. At the risk of over-simplifying a complex elaboration of how stigma and interaction function as societal responses to crime, a brief outline of the labelling perspective follows.

The process of labelling is linked to the exercise of conduct control within a community, via the expression and communication of behavioural norms and expectations, through face-to-face interactions between individuals and at the macro level of societal transactions. It is through interactional dynamics that we are viewed by others and that we view ourselves in relation to others. By developing an awareness of oneself from the perspective of “the generalised other” (Mead, 1934, p.152), an individual behaves in response to the actions and attitudes of others, imagining themselves as others might see and judge them, an idea articulated by Cooley (1902) in his concept of the “looking-glass self” (p.184). The development of the self-concept is thus a reflexive process, and an important determinant of an individual’s behaviour (Birenbaum & Sagarin, 1976, p.103; Haralambos, 1986, p.545-6; Shoham & Hoffmann, 1991, p.103; Matsueda, 1992, p.1581-4).

Lemert (1951, 1972) sought to describe this process by distinguishing between ‘primary’ and ‘secondary deviation’. The initial criminal behaviour – primary deviation – is importantly accompanied by a non-criminal self-image. Once the behaviour has generated a negative social reaction, however, this self-image is challenged by the views of other people. The individual responds to this societal reaction by developing a new self-conception, as ‘criminal’ or ‘deviant’ for example, which can lead to secondary deviation (via a gradual process, termed “role engulfment” by Schur, 1971, p.69). A person’s criminal self-image may be cemented when internal labelling is reinforced by external labels applied through criminal justice processes and informal mechanisms (Birenbaum & Sagarin, 1976, p.112-6; Haralambos, 1986, p.432-4; Vold & Bernard, 1986, p.252-5; Shoham & Hoffmann, 1991, p.112, 115).

The result of this labelling process is stigmatisation (Becker, 1973), whereby negative labels are affixed to individuals and groups in correlation to their social behaviour or position⁶³. When such stigma arouses antipathy, contempt or hostility among others, the effect is one of exclusion and segregation (Birenbaum & Sagarin, 1976, p.104-8). This outcome is most likely when the person is subject to a successful “status degradation ceremony” (Garfinkel, 1956), such as a criminal trial (Paternoster & Iovanni, 1989, p.376; Braithwaite & Mugford, 1994, p.141). The danger of this exclusionary process is identified by Cloward and Ohlin (1960), who describe how the ascription of stigma, and subsequent subordination of status, can lead to “a vicious cycle of norm-violation, repression, resentment, and new and more serious acts of violation” (in Shoham and Hoffmann, 1991, p.106). In this way, Becker’s notion of the “self-fulfilling prophesy” is brought to life (1973, p.34).

There are many reasons why young people are particularly susceptible to the risks of labelling and stigmatisation. It has long been recognised that children and young people are likely to be influenced developmentally by peer group attitudes and norms, and to be attracted to new ideas and adventurous or risky behaviours (see, for example, Day, Howells & Rickwood, 2003). Cognitive processes (such as impulse control), social competencies, and the acceptance of societal norms are assumed to develop with age, experience and maturity. The strategies used to impart social behavioural expectations to children may involve a mildly punitive or corrective rebuke, for example, while sanctions become increasingly more punitive as the child reaches adulthood and is assigned progressively more responsibility for his or her behaviour (see, for example, Birenbaum & Sagarin, 1976, p.105). Certainly adolescence is a time of experimentation and exploration of social boundaries. Testament to this is the fact that only a small proportion of juvenile offences are committed by chronic recidivists; most young offenders ‘grow out of crime’ (Rutherford, 1986, in O’Connor & Chui, 2002, p.187; Vold & Bernard, 1986, p.239;

⁶³ Becker uses Hughes’ (1945) notion of status traits, drawing a distinction between master and auxiliary traits, and master and subordinate statuses, to explain how stigma affects identity. By committing a criminal offence, a person risks being labelled ‘criminal’ – whereby they are attributed a master status trait. This can attract automatic assumptions of other undesirable qualities allegedly associated with this label – auxiliary status traits – such as untrustworthiness, dishonesty, or a lack of respect for the law (Becker, 1973, p.32-3).

Coumarelos, 1994, in Weatherburn, 2001, p.3; Cain, 1996, in Buttrum, 1997, p.3). There is a risk, however, that for some, the process of being labelled may serve to impede this natural progression.

Young offenders, in particular, are prone to employ various “techniques of neutralisation” (Sykes & Matza, 1957) to rationalise and justify their actions, while maintaining their self-image. These techniques may include: denying any personal responsibility for the offence; denying that any real harm has been caused by their actions; denial of the impact on the victim, or even that there is a victim; turning the condemnation back on the condemners by accusing them of hypocrisy — blaming ‘the system’ or society for their ills; and placing peer group norms above those of the wider community (Becker, 1973, p.28-9; Vold & Bernard, 1986, p.253; Shoham & Hoffmann, 1991, p.93-4; Wundersitz, 2000, p.110). By thus striving to preserve their position as morally defensible — while their actions have been deemed criminal by society at large — young people are liable to succumb to the isolating and exclusionary effects of labelling.

There has been a wide range of criticism levelled at the theory of labelling: its inadequate definition of key concepts; its limited applicability; its failure to explain initial criminal involvement; and its position of extreme cultural relativism, for example. Much of the criticism, however, is due precisely to its being labelled a ‘theory’, yet not meeting the requisite criteria of such a designation (see: Becker, 1973, p.178-9; Birenbaum & Sagarin, 1976, p.116-125; Paternoster & Iovanni, 1989, p.360; Shoham & Hoffmann, 1991, p.118-9). In fact, as Paternoster and Iovanni (1989, p.359) suggest⁶⁴,

Lemert (1976:244) may have stated the case best when he noted ...
that “labelling theory seems to be largely an invention of its critics.”

Braithwaite and Mugford (1994), for example, criticise labelling theorists’

⁶⁴ Further, Paternoster and Iovanni point out, “critics often have failed to comprehend the theory’s subtleties. For the most part, empirical tests of labelling propositions have been conducted with grossly misrepresented hypotheses that are more caricature than characteristic of the theory” (1989, p.360).

work as

myopic, exclusively focused on 'front-end' processes that certify deviance. Above all, they envisaged individuals as having 'total identities' (p.141).

This critique exemplifies the common misinterpretation of the labelling perspective as prescriptive rather than descriptive. Becker, for instance, does not imply that once labelled with a master status trait such as 'deviant', an individual becomes that label, rather that he or she is more likely to be wholly perceived as such and expected to display other associated characteristics (1973, p.30-3). Implied here are the multiple identities put forth by Braithwaite and Mugford themselves (1994, p.141). Becker is thus describing a process of societal reaction to social behaviour which can have a bearing on subsequent behaviour. Rather than being "overly deterministic" (Braithwaite & Mugford, 1994, p.141), a labelling perspective would seem to fit neatly with the 'repair work' of reintegration ceremonies being

directed at ensuring that deviant identity (one of the actor's multiple identities) does not become a master status trait that overwhelms other identities (Braithwaite & Mugford, 1994, p.142).

Indeed it could be argued that Becker's purpose in describing the process of labelling and stigmatisation could be construed as matching that of these particular critics; both are "concerned with maximising human freedom" (Becker, 1973, p.201; also pp.203, 207-8). Equally, both recognise the importance of self-concept in determining behaviour (Shoham & Hoffmann, 1991, p.120). Undoubtedly, different people will react to labels differently; the process of labelling is not necessarily stigmatising or criminogenic. Clearly, though, the process is complex and subtle and intricately interactive. It is perhaps best summed up in Paternoster and Iovanni's hypothesis, which highlights the focus of labelling theorists as on potentiality rather than the absolute, and outcomes as contingent rather than invariable:

Given the occurrence of a labelling experience, the individual may experience an alteration of personal identity, may find access to conventional others and

opportunities barred, and as a result may exhibit a greater involvement in delinquent behaviour (1989, p.381; also in Shoham & Hoffmann, 1991, p.119).

3.1.1 Labelling and diversion of young people

Despite fluctuations in its popularity and relevance, the labelling perspective has had a profound influence on juvenile justice policy and practice. Indeed, Pearson (1975) traces the earliest hints of a labelling theory to the nascent awareness of the potential harm of stigmatisation to children — of adult prison and jury trials, for instance — apparent in the nineteenth century justice reforms that led to the evolution of Children’s Courts (see Hogg & Brown, 1985, p.401; also Wundersitz, 2000, p.103). These effects — particularly on young, minor and first offenders — have been acknowledged in policy and legislative reforms in recent decades, too. For example, in recommending changes to juvenile justice in the 1980s, the then Victorian Department of Community Services (in its Child Welfare Practice and Legislation Review Report, 1984, p.444) made explicit reference to the dangers of labelling and the need to reduce stigma for young offenders (see Polk & Alder in Chappell & Wilson, 1986, p.315). This recognition, which coincided in the 1960s and 70s with the rise of abolitionist theories such as Schur’s (1973) “radical non-intervention”, informed shifts towards a ‘less is better’ or a “hands off” (Empey, 1982) approach to crime control (see Hogg & Brown, 1985, p.394; Polk & Alder, 1986, p.315). The subsequent divestment of justice functions manifest as a range of policy initiatives centred on principles of decarceration or deinstitutionalisation, decriminalisation and diversion⁶⁵.

While the juvenile justice policy pendulum has continued to swing between the extremes of punitiveness and protection (Wundersitz, 2000, p. 102, 104), the theory of diversion has retained prominence in responses to youth crime. Though Polk notes a conceptual ambiguity between diversionary measures directing offenders “out of the system” and the American concept of diversion

⁶⁵ While there is a great deal of overlap between these concepts, the purposes and scope of this research limit its consideration to the theory of diversion in juvenile justice practices. For a detailed discussion of these related principles see: Hogg & Brown, 1985, p.394; Polk & Alder, 1986, p.315-9.

“into a program”⁶⁶ (Polk, 1994, p.129), at its simplest, in an Australian context, diversion is construed as preventing young people’s entry or further penetration into the justice system (Klein, 1979, in Hogg & Brown, 1985, p.396; Alder & Polk, 1985, p.279). Most often this involves directing adolescent, first-time or minor offenders away from the formal justice system by either channelling them into alternative avenues or deciding not to prosecute (Murray & Borowski, 1986, p.177, 180-3; Polk and Alder, 1986, p.317; Carroll, 1994, p.170-3; Findlay et al. 1994, p.96; Sarre, 1999, p.6). According to Naffine & Wundersitz (1993, p.55), however, ‘diversion’ constitutes a “misnamed movement”, comprising “informal alternatives” which have been a feature of juvenile justice for years (see also Carroll, 1994, p.173). Indeed the vigour with which restorative principles have been embraced in different jurisdictions can be seen as contingent on the extent to which informal diversionary practices were already part of those justice landscapes (see, for example, Carroll, 1994, p.170-3). Such practices have tended to fall under the rubric of ‘community justice’⁶⁷. The notion of ‘community’ and its involvement in the justice process is analysed further on. Firstly, however, the nature of crime, its impact on individuals and their role in dealing with its consequences, is considered.

3.2 Crime as conflict – ‘repairing the harm’

Within a traditional adversarial justice framework, whose elements of retributive punishment⁶⁸ feature most strongly, crime is defined as the violation of the laws of the State (Zehr, 1990; Bonta, 1998, p.1; Wundersitz, 2000, p.110). The focus on the actual offence and the individuals involved is deflected — they are silenced, marginalised and disempowered (Barton, 2000, p. 1) — by the predominance of the State’s role in determining such matters.

⁶⁶ “The Australian Law Reform Commission (1981) recommends that a distinction be made between a decision to divert young offenders *from* the traditional Children’s Court, that is, not to prosecute, and a policy of diverting them *to* informal welfare agencies. While the latter policy is quite widespread in the United States, it is the former approach to diversion which, thus far, has most informed reform policies in Australia” (Alder & Polk, 1985, p.279).

⁶⁷ For examples and discussion, see Asher, 1986, pp.2-3; Sutton in Chappell & Wilson, 1994, pp. 217-221; Cunneen & White, 1995, pp.240-260.

⁶⁸ ‘Retributive punishment’ is used here to describe ‘desert-based’ punishment, acknowledging Barton’s argument that the terms ‘retribution’ and ‘punishment’, and their adjectival forms, are generally used inaccurately, creating “conceptual muddle and linguistic imprecision”; for further discussion of this point, see Barton, 2000, p.4.

The role of those affected is actually 'defined away' (Christie, 1977, p.5). There is another way of conceiving of crime, however: as a conflict between individuals, the violation of one person's rights and freedoms by another. This notion of conflict is premised on "the assumption of an ultimate reconcilability of interest" between the parties, in contrast to the portrayal of the criminal process as a battle between fundamentally irreconcilable interests (Griffiths, 1970, p.373). This idea forms a conceptual cornerstone in the discourse around informal justice mechanisms, alternative dispute resolution and mediation, upon which restorative justice principles build (Bazemore & Umbreit, 1995, p.302). It demands, moreover, an examination of the nature of such conflict and the roles played by the affected individuals in its resolution.

Rather than being viewed primarily as law-breaking, crime is seen as a breach of social bonds between citizens, "an offence against human relationships" (Claassen, 1996, p.1), resulting in injury that requires healing or repair. Within such a framework, the deeply personal and enduring effects of a criminal offence are no longer subjugated to the procedural imperatives of the State's formal justice system. Rather, the doing of justice is seen to require the active participation of those individuals most closely affected. As Van Ness et al. (1989) assert,

the victims, offenders and communities should be actively involved in the criminal justice system at the earliest point and to the greatest extent possible (in Dhyrberg, 1995, p.135).

The individualised 'victim' and 'offender' thus become subsumed within the larger, collective process of reparation and reconciliation, prompting a reconsideration of how these roles are conceptualised.

Intuitively, the victim of a crime is known to be the person upon whom harm, loss or injury is inflicted as a result of the criminal behaviour of another or others (Van Ness, 1993, p.267). Moreover, it is important to note, as Watson, Boucherat and Davis (1989) point out, that

the harm inflicted on a victim is never confined to physical injury and loss or

damage to property but also entails emotional upset and damage to the relationship (however tenuous it might be) between that person and a fellow citizen, effects which also diminish the positive freedom of the victim (in Cavadino & Dignan, 1997, p.245).

This highlights a series of important premises underlying a restorative approach: (a) that a relationship exists between victims and offenders; (b) that damage to it is an intrinsic part of the harm suffered by victims; and (c) that the process of restoration aims to reinstate a sense of ‘positive freedom’ for the victim and to restore dominion for all involved. As Zehr (1990, p.181) explains, “[c]rime is a violation of people and relationships. It creates obligations to make things right...” (in Van Ness, 1993, p.259). To expound this further, the nature of the relationship needs to be explored.

The key to the relationship between an offender and the victim of their crime is not whether they are previously known to each other, or reside in the same neighbourhood, or belong to similar social groupings. Nor is it that they are related by blood or acquaintance. The key, within a restorative framework, is the fact that they are related to each other in terms of a crime: one has been designated “victim” by their experience; the other, the perpetrator, the “offender”. A restorative justice approach seeks to acknowledge this relationship and to restore it to a position equivalent to that prior its consummation, that is before the crime took place (Van Ness, 1993, p.259). This may otherwise be described as “putting right the wrong that has been done” (Brown in Dhyrberg, 1995, p.135). Moreover, in a broader sense, the assumption underpinning a restorative approach is that everybody is harmed by crime to a greater or lesser extent (Wundersitz, 2000, p.110), whereby traditional notions of ‘victim’ become blurred.

While the Victorian Law Reform Committee acknowledges the term is not the subject of a generally accepted definition, for general purposes a ‘victim’ may be defined as “a person injured or killed ... by the criminal act of another person”⁶⁹ (VLRC, 1996, s.2.4). The United Nations’ definition⁷⁰ of victims,

⁶⁹ Such as for the purposes of providing compensation under Section 3 of the *Criminal Injuries Compensation Act 1983* (VLRC, 1996, s.2.4).

however, outlines broader criteria of harm which are more usefully applied in a restorative justice context:

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws (in VLRC, 1996, s.2.5).

This reference to ‘mental injury’ and ‘emotional suffering’ extends the ramifications of a criminal incident far beyond the individual immediately and directly affected, the primary victim. The circle of harm is widened to include secondary victims: the offender’s family, friends and associates, whose experience can involve feeling shock, surprise, disappointment or shame; and the family, friends and colleagues of the primary victim/s, who may share feelings of anger, moral indignation, anxiety or fear. People in the wider community may be indirectly affected if reports or rumour of the incident cause a change in their perceptions and behaviour (Van Ness, 1993, p.263, 267; O’Connell et al. 1999, p. 61-62,64).

As well as the emotional and psychological affects, or “the attitudinal costs of crime” (Dagger, 1980, in Van Ness, 1993, p.263), there may be direct and indirect financial costs. These Dagger (1980) quantifies as either “avoidance costs” — experienced by trying to reduce the likelihood of being burgled by installing a home security system, for example, or catching taxis instead of taking public transport; or “insurance costs” — incurred by anyone paying a higher insurance premium due to an increased risk of crime (in Van Ness, 1993, p.263). It is important to acknowledge every dimension of the impact of an offence, for the victims’ sake and to ensure offenders’ accountability by making them aware of the nature and scope of the harm caused by their actions. In terms of actual recompense, however, and in the interests of parity and fairness, only the most immediate financial costs are subject to restitution (Van Ness, 1993, p.267; Warner, 1994, p.146). Otherwise perceived risks of harsh or disproportionate sanctions being imposed (see, for example, Maxwell

⁷⁰ The *Declaration of the Basic Principles of Justice Relating to the Rights of Victims of Crime* was approved by the General Assembly of the United Nations in December 1985.

& Morris, 1993, p.96), power imbalances, or breaches of due process, might certainly become reality⁷¹ (Warner, 1994; Bazemore & Umbreit, 1995, p.307).

Victimisation, then, is characterised by the degree to which an individual's personal freedom is curtailed. For victims of a crime, the experience can affect their thoughts, decisions, behaviour, enjoyment of life. The repairing of this harm involves restoring to within their sphere of influence a sense of control or power over these aspects; in Braithwaite's terms, restoring dominion (Braithwaite & Pettit, 1990; Braithwaite, 2002). In a study of victim-offender mediation in British Columbia (Roberts, 1995) this sense of restoration was expressed by victims who reported feeling, for example, less fear and anger, and that "they weren't preoccupied with the offender anymore"; he or she "now no longer exercised control over them"; and "they had finally been heard" (in Umbreit, 1996, p.10). These remarks point to the sort of ongoing distress victims can experience, and to how — through dialogue and exchange — such suffering may be rectified.

In the context of the group conference such injury is not unique to the primary victim since, as noted above, restorative justice recognises that members of the families and communities of victims and offenders, as well as offenders themselves, may be harmed by the commission of a crime (Van Ness, 1993, p.259). It is in the telling of the impact of a crime and the subsequent discussion of reparative measures, within the conference setting, that the 'victim' label may be rendered pliant and impermanent. The conception of crime as conflict between individuals thus emerges as an essential platform from which the restorative process may begin to operate. The possibility of restoration — the repairing of the harm — lies in victims and offenders finding common cause, through dialogue and group decision-making, to resolve the issues which have brought them together. The strength of this process, as Daly observes, is that multiple justice aims — of retribution, rehabilitation, and reparation⁷² — may be accommodated (Daly, 2000, p.4; Daly, 2002, p.10. See

⁷¹ The Victorian model of group conferencing, however, requires the attendance of a legal representative, which would minimise this possibility in the context of this research at least.

⁷² From her observations of conferences, Daly notes elements of *retributive* justice in the form of censure for past offences, *rehabilitative* justice in such questions as how might future law-abiding

also Van Ness, 1993, p.265).

3.3 Engaging 'community' in the doing of justice

3.3.1 Community as 'a space of regulation'

Restorative justice assumes that the community, with the government, shares responsibility for dealing with offending behaviour⁷³ (Braithwaite, 1992, p.36; Bazemore & Umbreit, 1995, p.304; McCold, 1996, p.90; Polk 1998, p.497; Wundersitz, 2000, p.111). Van Ness et al. (1989) assert the principle thus:

in promoting justice, the State is responsible for preserving order, and the community is responsible for establishing peace (in Dhyrberg, 1995, p.135).

Further, as Wilkins (1991, p.312) observes, "the problem of crime cannot be simplified to the problem of the criminal" (in Bazemore & Umbreit, 1995, p.301); crime exists in a social context. Yet, a definitional vacuum exists as to the precise nature and role of the 'community' in its response to crime. In addressing the meaning of 'community', Hogg and Brown (1985) make an important observation:

Despite the current ubiquity of the term, 'community' remains vague and ill-defined – its positive connotations seem sufficient to guarantee its wide acceptance as self-evidently unproblematic and progressive (p.402).

These positive connotations – informality and voluntary participation, for instance – tend to be implicitly contrasted with the formal, coercive, and institutional nature of state-based activities. The presumption that a 'community based' approach equates to the relinquishment of state power over people's lives is manifest. Yet the extent to which the functioning and interrelationship of the major institutional sites within the 'community', such as family, school and work, and are regulated by state power is barely

behaviour be encouraged, and *restorative* elements in asking, for example, how can the offender make up for his or her actions (Daly, 2002, p.10).

⁷³ Braithwaite goes further, arguing: "the rule of law will amount to a meaningless set of formal sanctioning proceedings which will be perceived as arbitrary unless there is community involvement in moralizing and helping with the crime problem" (1989, p.8).

acknowledged⁷⁴ (Hogg & Brown, 1985, p.402; Stubbs, in Alder & Baines, 1996, p.46). It is clear that, despite its emphasis on community involvement, the conferencing process remains firmly ensconced within the broader justice system, subject to the authority of the court and ultimately the State (Polk, 1994, p.130). For instance, in the Victorian context, the responsibility for ensuring a young person's compliance with the outcome plan devised at a conference is assigned to a key individual, such as a family member, nominated by the young person⁷⁵. If the agreement is breached, the case may be referred back to court for further sanctioning (as for the breach of a court order).

Nor is the potential recognised for alienation and further repression of indigenous people, for example, for whom references to 'community' in the justice discourse may represent simply another arm of the existing regime⁷⁶ (Blagg, 2001, p.8). In fact, as Burchall (1981) points out,

[t]he 'community' becomes a destination assigned to the populations which the community technique of social government has itself produced as objects and targets ...[such as] children and youth (in Hogg & Brown, 1985, p.403)

As such, the 'community' emerges as "a space of regulation" (Burchall, 1981, in Hogg & Brown, 1985, p.403). But what does this mean in the context of this research, and in terms of the aim of a group conference being to actively 'engage the community'?

3.3.2 Power and agency

The idea of community as citizens assuming responsibility in resolving their conflicts brings to light twin themes: power — the influence of individuals over the decisions or actions of others — and agency — the capacity for active involvement in the decision-making process. These recurring motifs surface throughout this chapter. Their relevance in the subsequent discussion and

⁷⁴ For example, the authors point to "mandatory forms of incursion, exclusion and regulation", such as parental discipline, compulsory schooling and child labour legislation (Hogg & Brown, 1985, p.402).

⁷⁵ This reflects Donzelot's (1979) observation of the Children's Court as having effected 'government through the family', whereby the family becomes a site of intervention (in Cunneen & White, 1995, p.21).

⁷⁶ See, for example, Tauri and Morris, 1997, p.156; also, for further discussion, Asher, 1986, p.2.

analysis of the research findings emerges in later chapters. Hence a brief explanation of power and agency, in the context of the study of conferencing, is needed.

Power is defined, according to Weber (1948), as:

The chance of a man or a number of men to realize their own will in a communal action even against the resistance of others who are participating in the action (in Haralambos, 1986, p.98);

or,

The probability that one actor within a social relationship will be in a position to carry out his will despite resistance, regardless of the basis on which this probability rests (in Seymour-Smith, 1993, p.230).

Thus, power entails a group or individual getting its own way in a social interaction, with or without the other's consent (Haralambos, 1986, p.24, p.98). Adams (1977) puts it more mildly, omitting the 'resistance of others' as a condition:

the ability of a person or social unit to influence the conduct and decision-making of another (Seymour-Smith, 1993, p.230).

This definition allows for a broader understanding of how power shapes personal and societal relationships. Power is less obvious than authority — the acknowledged right to wield decision-making power — and more subtle than coercion — applying force in the face of resistance (Seymour-Smith, 1993, p.230). Nevertheless, power suffuses and inflects all human interactions, albeit invisibly. The manifest exercise of power occurs via "purposeful action", or agency,

the potential capacity for influencing events and for behaving independently of the defining constraints of society (Bilton et al. 1996, p.13).

Since power is held in relation to others, however, the ability of individuals to exert influence is contingent on the relative positions, status and motives of

others; these elements are less discernible since they are linked to the emission of latent power, the hidden currents of influence and control. To illustrate, as Boule writes in relation to power discrepancy in mediation,

The apparently weaker party may have significant sources of power other than funds or lawyers ... The apparently stronger party may be unwilling to wield its power (Boule, 1996, p.59).

Implicit in the latter scenario is the constraint of the stronger party's capacity to dominate by virtue of the apparent inequality of the contest; the 'weaker' party's relative powerlessness, paradoxically, may afford it a degree of sway in the negotiation process. Highlighted, moreover, is the relativity of power: it is not static, constant or absolute; rather, it emerges as negotiable and varying.

The conferencing process embodies the shifting currents of power and agency. Thus, though clearly contrived for a specific purpose and to meet particular objectives, the conference appears a microcosm of social interactions. Earlier discussion of crime as conflict alludes to this interactional dynamic. Beginning with the offence, for instance: an initial interaction (between 'victim' and 'offender') elicits a social response which comprises another set of interactions — between the 'offender' and the state, primarily — in the form of the legal and judicial process. This triggers further interaction involving a 'community' invoked for the occasion (the conference process). The mapping of power relations in such exchanges involves tracing currents of expectation and obligation, degrees of persuasion or coercion, the scope and overlap of interests, individuals' capacity for influence, and the circumstances and nature of consent and consensus.

3.3.3 The 'community of concern'

As mentioned, conferencing is distinguished by its acknowledgement of the social context of offending and the engagement of the community in the restorative process (Strang, 2000, p.24). Yet precisely who is acknowledged and how they are engaged is generally not made clear. As Strang (2000) notes, restorative justice processes take place "in a community context", where

'community' typically describes, "the people in the lives of the victim and offender who care most about them" (p.22). Yet while references to this context abound, few are accompanied by definitions or explanations of what it actually entails (Schiff, 1998, p.1). Moore, for instance, identifies the process whereby young offenders may "be reintegrated into their immediate community of interest and into the broader community of people to whom their actions were unacceptable" (1992, p. 205). Presumably, the former refers to the circle of supporters who participate in the conference, often described as the 'community of care' or 'community of concern' (see, for example, Serventy, 1995, p. 253; Strang, 2000, p.23); while the latter comprises the other participants, including victims and their supporters. But what is it about this group that makes them a 'community', beyond their coming together to collectively resolve the implications of a crime? And is this a valid basis on which to conceive of a 'community'?

3.3.4 A symbolic 'bringing together'

In general terms, a community may be characterised by collectivity and interdependence, whether on the large scale of an urban settlement, or a small-scale social network or professional group (Seymour-Smith, 1986, p.46). While the familiar construct of a community connected by shared interests or activities (a sporting club, a geographical locale, or a religious congregation, for example) evokes an image of a fixed and identifiable entity, in the context of a conference, 'community' comprises the temporary coming together of people, or their representatives, who are linked by their common experience of having been affected by a crime (Belgrave, 1996, s.5.3).

Certainly, the involvement of crime victims in the process of holding offenders accountable is engaging members of the broader social community in a way that traditional courtroom processes fail to achieve. Yet the inference that somehow the process creates lasting bonds between victims and offenders (Serventy, 1995, p.254) is simply not supported by practice or intuition.

Rather different forms of community need to be acknowledged⁷⁷ and each recognised as:

a shifting outcome of diverse social interventions and practices, neither internally cohesive nor fixed in space and time (Hogg and Brown, 1985, p.402).

This ‘community’, then, does not actually exist prior to or after a conference; it is merely symbolic of the nature of social life as collective and interdependent. This symbol is evoked with the dual aim of diminishing an adolescent’s perception of individual isolation, while augmenting a sense of responsibility to others and fostering an awareness of their potential for social agency⁷⁸ (see Hogg & Brown, 1985, p.407). As an example, SAJJ researchers found that young people, rather than being “powerless youth in a roomful of adults”, were able to “hold their own” in the majority of conferences observed (Daly, 2001, p.23). In such an interactionist process, symbols are essential means by which pedagogic communication is conveyed, such as the clarification of norms⁷⁹, and through which symbolic reparation may occur (Retzinger & Scheff, 1996, p.316). The notion of community thus emerges as a vehicle for the empowerment of participants in the restorative process.

So on one level, the notion of ‘community’ appears as a metaphorical concept, a symbol used to express social expectations about conduct norms⁸⁰ (Weijers, 2002, p.147). Yet it also intersects with earlier characterisations of victims. In the widest sense of the term, victimisation is extended to include secondary victims, such as offenders’ family members and supportive others. The engagement of ‘community’ therefore manifests as the acknowledgment and involvement of ‘victims’ in the restorative process. The mission statement of

⁷⁷ For example, the New Zealand Ministry of Justice discussion paper (1996) states: “Marshall (1992) has suggested that modern realities require an adjustment in thinking about what constitutes a community. He suggests that communities of geography (neighbourhood, parish, suburb, or village) have largely given way to communities of association (friends, clubs, professional and work associations) and membership of these is flexible over time. A combination of members of communities of geography and association may be said to constitute a community of interest in respect of offending incidents” (Belgrave, 1996, s.5.3).

⁷⁸ ‘Agency’ is defined as “the capacity (recognised both in a formal, political and legal sense as well as socially) to exert influence and power in a way that is not mediated through adult authority” (Hogg & Brown, 1985, p.410).

⁷⁹ See Birenbaum & Sagarin’s (1976, pp.1-29, p.59) discussion of norms and how they are communicated.

⁸⁰ Weijers evokes this metaphor in describing how ‘the community — friends, family and colleagues — [forms] intermediary moral chains between the offender and the legal system’ (2002, p.147).

Anglicare's Juvenile Justice Group Conferencing Program affirms this, its aim being:

to assist young offenders to develop an awareness that they are part of a community that includes family, significant others, their victims and peers (Anglicare, 2002, p.5).

Further, as Braithwaite observes, conferencing holds the "possibility of culturally plural deliberation and remedies" (Braithwaite, 1994, p.206), a significant imperative in a pluralist democracy such as Australia, and particularly in view of the over-representation of, for example, indigenous Australians in the criminal justice system (Blagg, 1997, p.482).

As suggested, 'community' may be seen as a symbol of collectivity and a means by which to convey and promote notions of mutual exchange and social responsibility, within "a context of mutual respect" (Walgrave, 2002, p.106). At the core of this symbolic representation is the active process of group decision-making, through which participants are enabled, empowered and encouraged to resolve the issues confronting them (Anleu, 1995, p.41; Boule, 1996, p.9). By facilitating dialogue and negotiation focussed on the needs and interests of the various parties (Boule, 1996, p.9), the conference bestows on the individuals concerned the power to resolve conflicts which affect them. This form of civic engagement provides a means of generating and maintaining mechanisms of social control that divests the state of some of this responsibility while supporting the principle of parsimony or frugality: that the least restrictive of appropriate penalties should always be imposed (Polk & Alder, 1986, p.315; Cunneen & White, 1995, p.223; Maxwell & Morris, 1996, p.94).

Conferencing provides an opportunity for the clarification of social norms, the crystallisation of the community's expectations for the conduct of its members (Christie, 1977, p.8). 'Community' is at once symbolised by the group participating in the process – a microcosm of the social world at large – and actually represented by the individuals present, who each brings to the conference a set of values, beliefs and aspirations that are shared and melded

within the restorative process. The conference, according to Moore, thus,

offers an alternative sphere of justice ... larger than the family but ... [with] shared understandings about “common decency” (1992, p.214).

The conference, as mentioned, functions as a symbol of mutual and cooperative endeavour, invoked in order to communicate a range of messages: the young person’s behaviour has far-reaching and harmful consequences, for which they are responsible; they have an obligation to make amends; and, in doing so, they may realise a capacity for agency in determining their own outcomes. Furthermore, that the consideration and discussion of remedies is a collective process of give and take, reinforcing the notion of participants belonging to a ‘community’ and playing a part in the construction and reaffirmation of moral meanings (Becker, 1973, p.184). Thus conferencing serves as a mechanism for social control, yet importantly it does so in a way that is inclusive. Herein lies the key to its “pedagogical possibilities” (Christie, 1977, p.8), and its restorative and reintegrative potential.

3.3.5 The emotional context

A key ingredient in the expression of ideas and expectations about behaviour and responsibility is the emotional context in which they are conveyed⁸¹. Ideally, in a conference, this comprises “compassion and understanding”⁸² (Daly & Hayes, 2001, p.2). It is subsequently through empathic resonance that shifts in the attitudes, awareness and perceptions of participants may occur. This process may be further understood within the framework of Tomkins’ (1962) theory of human affects. Psychological ‘affect’ theory, as articulated by Nathanson (1992), is linked to the experience of shame, emotion and empathy in the conference process (Moore, 1993, in Serventy, 1995, p.247-9; Moore & O’Connell, 1994, p.71; Moore et al. 1995, pp.17-23; O’Connell et al. 1999, p.23).

⁸¹ For example, reporting on data collected for the SAJJ Research Project (Daly et al. 1998), Daly notes that conferences are marked by calmness and civility; anger, aggressiveness, or arguing was observed in up to ten percent of conferences, while participants cried in one quarter of meetings (Daly, 2001, p.23 online).

⁸² Whether this ideal context of “compassion and understanding” arises out of thorough pre-conference preparation with participants or automatically out of the experience of the conference process itself, however, is yet to be documented.

Compared to the courtroom procedure which relegates victims and offenders to passive roles (Naffine & Wundersitz, 1994, p.249), the conference is an active process in which all participants are engaged, “providing an outlet for expressing feelings and moving beyond shame” (O’Connell et al. 1999, p.28). By encouraging the free expression of emotion in an environment of sharing and listening, the intensity of feelings may be tempered and subsequently transformed. This process of moving from one negative emotional state to another more positive, through the development of empathy, Tomkins describes as “affective resonance” (O’Connell et al. 1999, p.25).

It is through such an empathy-building process that social standards and behavioural norms may be absorbed and accepted as legitimate by the young offender, through what Katz terms “empathic responsiveness” (2002, p.32). Here the link with an interactionist framework is manifest. Further, it is through the empathic, interactional process that the potentially enduring nature of the relationship (with its accompanying moral obligations), established between participants during the conference process, may be recognised. This notion of a continuing relationship is essential to the idea of the expression and maintenance of “moral cohesion” (see Griffiths, 1970, p.387) — ensuring people’s commitment to society’s conventional norms and institutions (Becker, 1973, p.27) — that is the basis, surely, upon which ‘community’ is sustained.

3.4 Sources of social control — ‘communities of influence and care’

It is arguably the maintenance of moral cohesion that is the purpose of any criminal justice system⁸³, though as Griffiths (1970) contends⁸⁴, this is an ideological perspective not generally espoused. Nevertheless, maintaining moral cohesion entails a society policing “its moral boundaries, that is, the point at which behaviour threatens the integrity of the community” (Erikson,

⁸³ The term ‘criminal justice system’ is used in this context to refer to the way in which the criminal law is conceived and applied, notwithstanding the conflicting goals and diversity amongst criminal justice agencies and operations. For a discussion of the problems in describing the institutions and processes of criminal justice as a ‘system’, see Findlay, 2001, pp.19-20.

⁸⁴ In his important critique of ideology prevailing over how criminal processes are characterised: Griffiths, J. (1970) “Ideology in Criminal Procedure or A Third ‘Model’ of the Criminal Process”, *The Yale Law Journal*, 79, 3, pp. 359-417.

in Griffiths, 1970, p. 386); it does this by denouncing and punishing behaviours deemed injurious to its norms and institutions, and thus to the interests of its members. There are various means by which this social control may be achieved and sites it can be deemed to occur; for instance, Marshall describes as central to a restorative paradigm, the

recognition of the community, rather than criminal justice agencies, as the prime site of crime control (Marshall, 1995, in Belgrave, 1996, s.2.1).

Here the link between the preceding analysis of community and the ensuing discussion is clear. Since conferencing seeks to empower and engage families, as “communities of influence and care” (Barton, 2000, p.1), in dealing with their young people’s offending⁸⁵, account must be taken of writings identifying the family as a source of informal social control.

The notion of social control is a pervasive theme in criminological literature, and one frequently associated with the strength or ability of the family structure to impart and impose a guiding moral influence. As Maxwell and Morris (1993) note, a common supposition “is that deficiencies in the family lie at the root of juvenile crime” (p.75). Further, according to Moore, group conferences⁸⁶ express symbolically the idea that crimes “occur in the context of failed control by families and other intimate communities” (1992, p.207). In light of a conflicting view, however, that the fault lies in “the system’s inability to prevent reoffending and crime” (Barton, 2000, p.1), Moore’s assumption may be seen to place undue blame on families and significant others. Barton (2000) argues, instead, that the primary stakeholders in the criminal justice process – the victims, offenders, and their respective families, friends, peers and colleagues – are disempowered⁸⁷ by the traditional justice response, which fails to provide an opportunity to those “who are the best placed to address both the causes and the consequences of the unacceptable behaviour in question” (p.1). Thus, he contends, “the chief weakness of the status quo is

⁸⁵ See note 76 (Donzelot’s observation).

⁸⁶ It is to be noted here that Moore is writing specifically about the Wagga model of conferencing as practised in New South Wales. While different in philosophy and practice to the Victorian model, the aim of engaging and strengthening family and wider social connections is common across these jurisdictions (see Anglicare, 2002, p.5).

⁸⁷ By, for example, the legal profession positioning itself at the centre of the criminal justice process (Barton, 2000, p.20), recalling Christie’s idea of professionals’ ‘theft of conflict’.

the greatest strength of restorative justice interventions” — enabling individuals to deal with their own conflicts (Barton, 2000, p.1).

This is not to discount Moore’s suggestion entirely, however. Both writers’ positions highlight the social context of offending and point to causative factors outside an individual’s self-control. Most important is the recognition that responsibility for dealing with criminality is multi-directional. Further, attempts to explain the causes of delinquency must also recognise this multi-dimensionality and the dynamic relationship between social bonds and deviant behaviour (Cernkovich and Giordano, 1987, p.295; Shoham & Hoffmann, 1991, p.98). Indeed, rather than focusing on why people commit crimes, social control theories, rooted in an interactionist view of crime as a social process, assume that some inclination towards deviance is natural (recalling the fact that most young offenders ‘grow out of crime’), and seek instead to explain why people conform to social norms, rules and expectations (Vold & Bernard, 1986, p.232; Shoham & Hoffmann, 1991, p.100).

The notion of conformity underpins any pedagogical interaction aimed at imparting behavioural expectations. The idea of young people having a “stake in conformity” was introduced by Toby (1957), who argued that the lower a person’s stake in obeying rules, the higher the likelihood they would be tempted to risk being punished by breaking them. Toby linked these stakes in conformity to “school adjustment” and peer support, which he held to be grounded in home and community ties (in Vold & Bernard, 1986, p.234). Such external constraints have been contrasted to personal, internal and indirect controls, which determine how an individual responds to social conduct expectations – how or whether these are absorbed and acted upon or against⁸⁸. The importance of the ‘self-concept’ in regulating an individual’s behaviour has been explored above in the context of labelling and an interactionist perspective⁸⁹. From an interactionist standpoint the self-concept is meaningless, however, unless operating and conceptualised within a social context, that is, in relation to other people; individuals, by becoming

⁸⁸ For example: Reiss’s personal controls, 1951; Nye’s internal and indirect controls, 1958; Reckless’s external and internal containment, 1961. See Vold & Bernard, 1986, p.233-7.

⁸⁹ For further discussion of the notions of ‘self-concept’ and ‘self control’ see Birenbaum & Sagarin, 1976, p.103; Haralambos, 1986, p.545-6; Matsueda, 1992, p.1581-4; Shoham & Hoffmann, 1991, p.103.

‘self-conscious’, can direct their own course of action by considering and reflecting on the consequences of past and future actions (Mead, 1934, in Haralambos, 1986, p.545). This recognition demands an analysis of the social context most likely to exert influence over the behaviour of young people.

3.4.1 Family factors

Besides the work of Glueck and Glueck (1950) on the causes of juvenile delinquency, which placed strong emphasis on family factors, Nye (1958) was the first theorist to identify the family as the single most significant source of social control for young people (Vold & Bernard, 1986, p.235; Cernkovich & Giordano, 1987, p.295; Laub & Sampson, 1988, p.358). These early researchers have been criticised roundly on methodological and theoretical grounds⁹⁰. Their work, however, provided basic concepts and a framework for later theorists (such as Matza (1964) and Hirschi (1969): see Vold & Bernard, 1986, p.239-245) to further analyse family variables from a social control perspective (Laub & Sampson, 1988). Hirschi (1969) proposed that individuals are less likely to engage in criminal behaviour if they are tightly bonded to social groups such as family, school and peers. According to Hirschi’s theory, the most significant element of the social bond is attachment, which is necessary for the internalisation of norms and values. A second requirement is commitment, evoking Toby’s (1957) notion of ‘stakes in conformity’:

the rational investment one has in conventional society and the risk one takes when engaging in deviant behaviour (Vold & Bernard, 1986, p.241).

A third element is a person’s involvement in conventional activities and, finally, their belief in the need to abide by society’s laws and conventions. Hirschi found that attachment to parents, school and peers correlated with a young person’s likelihood to engage in delinquent behaviour, which has

⁹⁰ For discussion of the criticism of the Gluecks’ research, see Laub and Sampson, 1988, p.357-361; for a critique of Nye’s study, see Vold and Bernard, 1986, p.236-7.

generally been supported by empirical research⁹¹ (in Vold & Bernard, 1986, p.247).

Despite the role of the family having been somewhat neglected or dismissed by criminological research in favour of the focus on peer, school and structural variables (Cernkovich & Giordano, 1987, p.295), a renewed interest in the relationship between family life and delinquency (Laub & Sampson, 1988, p.362) has illuminated the importance of families — their dimensions and dynamics — in relation to the behaviour of their young people. In their comprehensive review of a wide range of research, for example, Loeber and Stouthamer-Loeber (1986) assert that

lack of parental supervision, parental rejection, and parent-child involvement, are among the most powerful predictors of juvenile conduct problems and delinquency. Medium-strength predictors include background variables such as parents' marital relations and parent criminality. Weaker predictors are lack of parental discipline, parental health, and parental absence (in Laub & Sampson, 1988, p.362).

These factors accord with the findings of research into family factors and delinquency. Cernkovich and Giordano (1987), for instance, detail the specific mechanisms of family interaction associated with delinquency. Laub and Sampson (1988), in their thorough reanalysis of the Gluecks' original data, confirm that family process variables – supervision, attachment and discipline – are the most important predictors of serious and persistent delinquency. Using Australian data, Sarantakos (1997) links aspects of the family environment to the occurrence of delinquency, reporting that offending children are more likely to be found living with such factors as instability, violence, conflict, hostility or indifference. Steinberg (1987) distinguishes between the onset of delinquency in middle, early or pre-adolescence, and specifically associates a lack of parental monitoring, excessive parental permissiveness, and disruption in the parent-child relationship with each respectively. The familial influences identified in studies such as these also

⁹¹ For a review of empirical data supporting Hirschi's theory, see Empey, 1982, p.269-75 (in Vold & Bernard, 1986, p.245).

recall Reckless's (1961) categorisation of "external containment" forces, which comprised such factors as a consistent moral front, reasonable norms and expectations, effective supervision and discipline, and a sense of belongingness and identity (Vold & Bernard, 1986, p.237).

This latter notion dovetails with the important work of Resnick (Resnick, Harris & Blum, 1993; Resnick et al. 1997) on the impact of protective factors and resiliency on the well-being of adolescents, which builds on control theories of social bonding and attachment⁹². These studies analyse data gathered from several thousand US high school students, whose self-reports included information on substance abuse and other risk-taking behaviours. They identified the protective function of caring and connectedness in the lives of young people, particularly a sense of connectedness to family and to school (Resnick et al. 1993, p.s3). Low family stress — a measure combining parental unemployment, poverty, domestic violence, and parental substance abuse — was also found to buffer against life stresses which could otherwise lead to negative or "health compromising behaviours" among young people. These three factors were common for girls and boys, protecting against "acting out" and "quietly disturbed" behaviours⁹³(p.s4-5).

The most powerful protective factors were found to be family and school connectedness, with the latter predominating against 'acting out' and the former the 'quietly disturbed' behaviours. Significantly, family connectedness is described as

a sense of belonging and closeness to family, in whatever way family was comprised or defined by the adolescent ... without specifying the form or composition At the core of family connectedness is the adolescent's experience of being connected to at least one caring, competent adult in a loving, nurturing relationship (Resnick et al. 1993, p.S6).

According to the researchers, other studies of resiliency and youth well-being

⁹² For discussion of attachment theory see, for example, Bowlby (1969, 1988) in Katz, 2002, p.30-1; Bacon & Richardson, 2001.

⁹³ "Acting out behaviours" included multi-drug use, truancy, risking unintentional injury (such as drinking and driving), and delinquency risk, and were associated more with boys; "quietly disturbed behaviours", such as emotional stress and suicidal ideation or attempts, featured more among girls.

report similar findings. They urge that any intervention aimed at reducing young people's high-risk behaviour must therefore "address the underlying need for adolescent *belonging*", and be characterised by "caring as a conscious, explicit quality" of the people and programs involved (Resnick et al. 1993, p.8).

Findings of Resnick et al. (1997) similarly show that connectedness to parents, family and school is protective against health-risk behaviours including violence and substance abuse. These results are confirmed by McNeely, Nonnemaker and Blum (2002). The Resilience Project (Fuller, McGraw & Goodyear, 1998), investigating protective factors for young people in Australia, also draws on and supports the work of Resnick. Students from 45 Victorian schools rated the following factors as most protective: family connectedness (feeling loved); peer connectedness; feeling that your family respects your decisions; good teachers and fitting in at school.

Such research attests to the importance of family factors in the development of adolescent behaviour. The idea of the family as a primary source of social control underpins the restorative principles of family engagement and responsibility (see Braithwaite, 1989, pp.21-31). Yet whether crime is viewed as due to the failure of family or community or societal control is not the focus of the restorative process. Rather, the crime can be seen as the catalyst for the process – an opportunity to engage and empower individuals, families and communities to deal with the issues arising from the offence. The process of restoration is part of a dynamic and collective process of growth and learning and moral development – within the symbolic context of community as a "space of regulation" (Burchall, 1981, in Hogg & Brown, 1985, p.403). Crimes, as conflicts, are thus "used, and become useful" (Christie, 1977, p.1) in the constant cycle of clarification and meaning-making by which society maintains its mechanisms of social control, through a "continuous discussion of the law of the land" (p.8). These are the "pedagogical possibilities" (Christie, 1977, p.8), to which earlier discussion alluded.

3.5 Conclusion

This chapter sets up the framework around which the study builds. The concepts outlined are identified as central to the theory and practice of conferencing. Further, they provide the theoretical touchstone for the methodological structure of the research, and the analysis and discussion of its results.

Labelling, for instance, is tied to the interactionist perspective underpinning the research and to the theory of reintegrative shaming. At the core of a restorative paradigm is the conception of crime as conflict, breaching social bonds rather than simply breaking the law. The discussion around this theme examines the notion of how these bonds may be restored — the harm repaired — through the acknowledgement of the social, familial, emotional, and economic ramifications of an offence. It becomes apparent that individuals and the wider community, including offenders themselves, may be ‘victimised’ by a crime. In response, the restorative ‘community’ is drawn together — both literally and symbolically — to express its disapproval and communicate behavioural norms and expectations. This community comprises the people most likely to exert moral influence over the young person — those affected by the crime together with those to whom and by whom they feel connected and supported. Accordingly, the exploration of social control centres on the family as the locus of such influence and care.

In setting out these concepts and exploring the links between them, the thematic structure of this chapter shapes the design and theoretical orientation of the study detailed in chapter four. Moreover, it structures the presentation and analysis of findings in chapters five, six and seven.

CHAPTER FOUR

Research Orientation & Design

4.0 Introduction

This chapter describes the research process and why the methods and strategies employed were deemed most suited to its purposes. Before detailing its practical and logistical elements, however, the philosophical assumptions underpinning the research need to be made explicit: the orientation of the research must be specified before its design can be mapped.

As Scott and Usher argue, “philosophical issues are *integral* to the research process”, because they “constitute what researchers ‘silently think’ about research” (1999, p.10). These ‘silent thoughts’, when evinced, establish the framework of understandings and assumptions upon which the study rests, and serve to manifest the values embedded in the research. To neglect these is to create potential problems: it can undermine the trustworthiness of the researcher, by not revealing important epistemological issues, for example, to which decisions about data collection are linked (Scott & Usher, 1999, p.106). It can frustrate readers’ attempts to locate the study within — or assess its contribution to — a wider theoretical discourse. And very often, as Neuman points out, “[t]he facts do not speak for themselves” (Neuman, 1997, p.324); the researcher must return to theory to make meaning from the results. Burying the theoretical roots of the research ultimately limits its usefulness in terms of intelligibility, accurate interpretation, and applicability.

With these perils in mind, this chapter aims to establish the ontological, epistemological and methodological framework of the research, which supports the logic of the research process and the rationale for its methods. Described in detail are the procedures adopted in selecting the sample, gathering data — through observation, in-depth face-to-face interviewing, telephone and email interviews and a focus group — and data-analysis. This is followed by consideration of reliability and validity, and ethical issues.

4.1 Ontological & epistemological framework

This study implies a relativist ontology; that is, that multiple constructed realities exist and are inter-related (Guba & Lincoln, 1981, p.57; Denzin & Lincoln, 1994, p.13). The epistemological basis of the enquiry is a constructionist one, which assumes that social reality is constructed by its human participants; it is given meaning through the interplay between our perceptions, understandings and interpretations, which take place and are “transmitted within an essentially social context” (Crotty, 1998, p.42). The epistemology is thus subjectivist, too, in that “as social beings, we cannot help but be subjective” (Scott & Usher, 1999, p.25), and amidst our divergent social reality, understandings are created through the researcher’s inter-relationship with the subject (Denzin & Lincoln, 1994, p.13).

It is this point regarding the shared nature of meaning-making activity by which Crotty distinguishes constructionism from constructivism: while the former emphasises the social dimension of meaning, the latter, he argues, has a more singular focus on the individual and the unique experience of each human mind. A constructivist position can thus be a cocoon against criticism (Crotty, 1998, p.58). While many writers seem to use the term ‘constructivism’ as though it were interchangeable with Crotty’s ‘constructionism’ (see, for example, Denzin & Lincoln, 1994, p.13), for the purposes of this research Crotty’s distinction is a useful one.

4.2 Theoretical orientation

The theoretical perspective this study assumes is an interpretive, interactionist one. Interpretivism is linked to Weber's (1964) notion of *verstehen*, or understanding (Bilton, et al. 1996, p.627), and as such denotes an empathic approach involving the researcher trying to understand the participants' experiences, perceptions and the meanings they ascribe to their actions, from their own perspective. Clearly anti-positivist, this approach emphasises the

‘subjective’ in a way that seeks to understand the multiplicity and complexity of human experience; since understanding always involves interpretation, according to Gadamer (1975), it necessarily contains a ‘subjective’ element (Scott & Usher, 1999, p.25, 28).

Tied to the interpretivist focus on the construction of meaning and the negotiation of social interaction (Scott & Usher, 1999, p.25), is the interactionist perspective — based on Mead’s symbolic interactionism (Haralambos, 1986, p.543-6; Bilton et al. 1996, p.92, 624; Scott & Usher, 1999, p.48) — which highlights the interactions between people and their ‘life worlds’ (Crotty, 1998, p.75). As mentioned, the particular emphasis of this approach is on how social order is negotiated and interpreted, through ongoing processes of social interaction and communication (Shoham & Hoffmann, 1991, p.103; Matsueda, 1992, p.1580; Scott & Usher, 1999, p.49). Individuals, in directing their own action, are influenced by the social process through their interpreting and responding to shared meanings, behavioural expectations, and the reflected appraisals of others. This continual and cumulative interactional process hinges on the mechanism of reciprocal role-taking, whereby individuals project themselves into others’ roles to appraise the situation from another’s perspective (Haralambos, 1986, p.544-5; Shoham & Hoffmann, 1991, p.103; Matsueda, 1992, p.1580). In this way, according to Mead (1934), “the community exercises control over the conduct of its individual members” (in Haralambos, 1986, p.546).

An interactionist focus, therefore, fits the study of the group conferencing process which itself is grounded in interactional principles (such as shared and symbolic meanings, empathy, cooperative action, family and community involvement) and notions (labelling and reintegrative shaming, for instance). Clearly, this theoretical framework shapes the doing of the research in a qualitative mode.

4.3 Research questions

In expounding the methodological framework shaping this research, it is

pertinent to reiterate the question around which this study hinges:

How does offenders' family support impinge upon group conferences and their outcomes?

The thrust of which gives rise to a series of sub-questions:

- What role does the offender's family play during and after the conference?
- To what extent does the 'success' of the conference hinge on the family dynamics, behaviour, background, and support of the offender?
- How is a conference's 'success' defined in relation to the family of the offender?
- How does the notion of 'reintegrative shaming' (Braithwaite, 1989) relate to the offender's family?
- How and when, if at all, does 'reintegration' of the offender take place?
- How do the family dynamics impinge upon this process of reintegration?

These questions form the nub around which were formulated the data-gathering processes and protocols, discussed further on.

4.4 Why a qualitative approach?

It is the subject and purpose of the research which determines the appropriate strategy. Juvenile offenders in Victoria are most frequently described quantitatively, as statistics⁹⁴. The aim of this research is to add to this depiction an in-depth analysis of aspects of the experience of a small proportion of the juvenile offenders referred to conferencing. Previous

⁹⁴ See, for example, Children's Court of Victoria Annual Report 2000-2001, and the Department of Human Services report, Recidivism Among Victorian Juvenile Justice Clients, 1997-2001.

research has sought to determine the effectiveness of such programs by concentrating on re-offending rates as measures of success (Markiewicz, 1997; Success Works, 1999). Yet the need for supplementary qualitative data about the nature and context of recidivism is also acknowledged (Success Works, 1999, p. 5).

Since this study aims to discover often tacit and intangible elements of the restorative justice conference as a process of human interaction, the limitations of a quantitative approach preclude its application. The use of closed-ended questions to yield information in surveys or interviews, for example, while being easier to code and analyse than open-ended questions, does not allow for depth or ‘thickness’ of description, which is precisely the sort of data sought when asking participants about their feelings, perceptions, and experiences. As indicated in the previous chapter, studies demonstrate the inability of quantitative methods either to adequately capture and describe critical aspects of restorative justice, such as assessing forgiveness (see, for example, Harris & Burton, 1998, p.238), or to yield rich data about participants’ perceptions and experiences.

In order to answer the questions posed, this research needs to delve into the lives and understandings of young people and their supportive others. As Giddens (1984) points out, “we cannot describe social activity at all without knowing what its constituent actors know, tacitly as well as discursively” (Scott & Usher, 1999, p. 47). The only way to tap such knowledge is through qualitative methods such as observation and in-depth interviewing, using the researcher as instrument. The strength of such methods lies in their ability to yield “rich descriptions” of, and insight into, group dynamics and behaviour, feelings and perceptions (Denzin & Lincoln, 1994, p.6), notions central to this study. Indeed, Lincoln and Guba (1985, p.193-4) identify characteristics that uniquely qualify humans as qualitative research instruments. Responsiveness, immediacy, adaptability, ability to grasp context and access tacit knowledge are noted, as are the human instrument’s capacity to clarify, summarise, and explore atypical responses.

4.5 Research strategy

In line with its interpretive, interactionist perspective the methodology underlying this study is practical⁹⁵, qualitative, ideographic⁹⁶ and abductive (Bilton et al. 1996, p.625; Neuman, 1997, p.68, 71; Scott & Usher, 1999, p.47) — a strategy of ‘letting the data speak’ (Crotty, 1998, p.78). An inductive approach, whereby theory is developed from collected data, was initially considered appropriate to this research. Yet the condition of grounded theorists⁹⁷ (who use inductive reasoning) that data be free of the preconceptions and frameworks of the researcher, shows induction as befitting a different kind of research. Inevitably any study of restorative justice processes is coloured by the assumptions with which such practices are imbued. The research questions above, for instance, are laden with theoretical links and concepts. This research is concerned moreover with developing understanding of participants’ experiences of conference processes and then, drawing on the theoretical framework, presenting models of typical experience; thus entwining data with theory — an approach antithetical to induction.

Reflection upon the role of abduction, however, in interpretive, interactional analysis highlights the fit between abductive reasoning and the objectives of this study: first, drawing out meanings as expressed by research participants, empathically representing these constructs, then later applying theoretical templates to move “from lay to technical accounts of social processes and lives” (Scott & Usher, 1999, p.49). An abductive research strategy assumes “that we can only know social reality through the eyes of the social actors involved in it” (Scott & Usher, 1999, p.3), a notion inextricably bound to the ontological and epistemological framework outlined above.

⁹⁵ “In contrast to positivism’s instrumental approach, the interpretive approach adopts a *practical orientation*” (Neuman, 1997, p.68); thus a distinction is drawn between a quantitative and a qualitative mode.

⁹⁶ ‘Ideographic’ referring not so much to symbolic representation as to “thick” description of observations and participants’ reported experience (Neuman, 1997, p.71).

⁹⁷ Grounded Theory is a widely used social research approach, developed by Glaser and Strauss (1967), in their seminal work, *The Discovery of Grounded Theory*, and later modified in response to criticism. Glaser and Strauss originally recommended that researchers avoid presuppositions, other hypotheses and previous studies, to ensure ‘theory-free’ data (Scott & Usher, 1999, p.43; see also Lincoln & Guba, 1985, p.203); this remains the preferred position for many grounded theorists (see, for example, Streubert, 1995, p.158).

Such an approach does raise potential problems relating to its implicit double layer of interpretation, however. As researchers adopting an interpretivist stance will acknowledge, “social theories need to be built on everyday concepts” (Blaikie, 1993, p.207). Yet, as Scott and Usher point out, there is an issue to be resolved: the methodological acceptability of going beyond the language and meanings of the research participants, to apply readings from a wider discourse (Scott & Usher, 1999, p.49). This introduces Giddens’ notion of the “double hermeneutic” (Scott & Usher, 1999, p.149), which needs to be addressed by any interpretive social scientist — the two-layered nature of interpretation that can render social constructs inaccurate, and therefore unreliable, through re-evaluation. To counter the effects of this potential problem, Scott and Usher suggest “a self-referential element” be built into the research methodology (Scott & Usher, 1999, p.149), to achieve transparency. Such a strategy is discussed further in this chapter.

4.6 Methods

The case study approach provided a data collection vehicle compatible with the methodology outlined thus far: an in-depth, qualitative approach. Since case study favours particularisation over generalisation (Stake, 1994, p.8; Scott & Usher, 1999, p.88), a small number of cases comprising conference participants (young people and their significant others) yielded a rich and concentrated source of material — affording “thick description⁹⁸” — about the conference process and the human dynamics involved. Case study was thus adopted as a procedural approach rather than as a methodological paradigm⁹⁹, the latter assuming a different ontological and epistemological orientation (Scott & Usher, 1999, p.87-98). The methods used to gather case material are described below.

⁹⁸ According to Lincoln and Guba, it is “thick description”, through ideographic interpretation, that characterises the case study, the function of which is to provide “essential judgmental information about the studied context” (1985, p.217).

⁹⁹ This point refers to Scott and Usher’s (1999) cogent argument that there are two different ways to understand a case study approach: “either as a set of procedures integral to all types of research; or as a paradigmatically separate form of research” (p.87)

4.6.1 Selection of sample

To enable the in-depth study of a small number of information-rich cases it was originally intended that a purposeful sample be selected, ideally using a maximum variation strategy with the aim of “capturing and describing ... a great deal of participant or program variation” (Patton, 1990, p.169). The intention was to sample a cross-section of the Anglicare program’s clients in terms of age, gender, offence, socio-economic strata, and identification with a particular ethnic or cultural group. This strategy, however, was likely to be constrained by the availability of cases referred to the program, the time-frame of the research, and the willingness of clients to participate in the research.

As anticipated, the actual sample was determined by the number of court referrals¹⁰⁰ and the level of participants’ cooperation. Further there were a number of conferences deemed ‘inappropriate’ by the agency¹⁰¹. Many of the young people referred to the conferencing program were unwilling to participate in the study. Reasons for their unwillingness included pride, anxiety or apprehension about the conference process. For some, the prospect of an observer at the conference was an unwelcome intrusion into an already unpleasant and stressful situation. The thought of having to talk to a stranger about their experience was even less desirable.

The sampling strategy thus devolved into a selection criterion based on the willingness and consent of participants, rather than on particular case characteristics. Nevertheless, the sample represented a group of cases worthy of in-depth study, in that the young people and their family members and/or significant others were willing to provide detailed accounts of their personal experience and perspective. After all, as Patton (1990, p.181) affirms, qualitative sampling is based on the principle of selecting information-rich cases for in-depth study.

¹⁰⁰ In 2002, for instance, 38 cases were referred to the conferencing program.

¹⁰¹ Anglicare staff determined clients inappropriate in cases where there were protective issues, or where the family situation was too ‘delicate’ or ‘precarious’ for its members to participate in the study (for example, where issues of domestic violence were present).

That is not to say that the young people and families who chose not to take part in the research were lesser sources of potential information. Clearly, their decisions and reasons for not participating would be worthy of enquiry in themselves. The point is that this study was focused closely on the reported experiences, perceptions, and the constructed meanings and interpretations of a small number of people. Since any effort to gather information from all conference participants was beyond the compass of this research, in the end, the emergence of the sample through opportunity is worthy of note as a methodological development rather than a setback.

Ultimately, the sample comprised seven young people and their families and/or supportive others¹⁰². It was hoped that the sample could be located within the broader population of Anglicare's conferencing program clientele, to compare their characteristics, including: the offenders' ages and gender; offences and prior offending patterns; their family circumstances; their ethno-cultural-linguistic background; their prior relationship (if any) to the victim; and the nature and level of support from family and/or significant others. Unfortunately, however, these statistics were not directly available. This demanded reliance, instead, on the anecdotal data of convenors based on their personal experience with clients of the program. This information is presented in chapter five.

4.6.2 Data collection

The following data collection methods were employed:

- (i) Observation of group conferences;
- (ii) Interviews with young people and their supportive others, convenors, and key stakeholders; and
- (iii) A focus group with key stakeholders.

This process took place over a fourteen month period, from May 2002 to June 2003. Problems encountered at the initial stages of this phase centred on difficulty gaining access to conferences and their participants. Firstly, as

¹⁰² See table 5.1 for characteristics of the research participants.

mentioned, the small number of referrals to the program meant that the pool of potential subjects was limited, restricted further by a lack of clients deemed eligible for the research. Secondly, apparently ineffective communication strategies between program staff and the researcher meant that clients were not being adequately informed about the research¹⁰³. This issue was overcome by persistent follow-up and, finally, by sending copies of the proposed interview schedule, along with a letter of explanation, so that clients could be more effectively briefed as to what participation involved on their part.

Two further issues are to be noted due to their impact on the researcher's ability to gain access to research participants. The first involves the high turnover of program staff¹⁰⁴. Following the departure (in late 2002) of a full-time convenor (who had joined the program in 2000), the employment of part-time workers ensued. This had significant implications for the study, in that the researcher was not always made aware of a convenor having left until after they had handed their caseload on to a new staff member. New convenors were employed without previous conferencing experience and were trained 'on the job' through understudy assignment (Robbins et al. 1997, p.411). Invariably they were shown the research protocols with brief instructions to mention them to each client, but without a detailed explanation of the research context and objectives, and without having been introduced to the researcher in person. This meant that several cases were referred to the program and assigned to a worker without the young person being informed of the research and asked if they wished to participate. If they were advised it was in a perfunctory manner unlikely to yield a positive response. The second issue involved the government tendering process in 2002; Anglicare's bid for the program was unsuccessful.¹⁰⁵ This had significant implications in terms of resource allocation and morale.

The researcher planned to inform clients about the study, and invite their participation, during the convenor's final meeting with the young person and

¹⁰³ For example, when asked if he wished to participate, one young person informed the conference convenor that he didn't want to be part of "someone's school project".

¹⁰⁴ During the data collection period there were at least four new convenors appointed to replace those who had left; none had any previous experience conferencing with young offenders.

¹⁰⁵ As earlier mentioned, Jesuit Social Services took over from 1st July, 2003.

their family prior to the conference. The opportunity would thus be presented for the young person (and family members) to meet the researcher and form an impression of what an informal interview might be like. They would be given a brief verbal summary of the research and what it required of them, a letter of explanation ('plain language statement'), and a consent form¹⁰⁶, denoting their informed, written consent to participate. Due to logistical and practical constraints¹⁰⁷, however, this did not eventuate. The convenor generally mentioned the study directly to clients, who indicated whether they agreed to the researcher's presence at their conference, and to being interviewed. The researcher was then informed by the convenor, and invited to attend the conference¹⁰⁸.

(i) Observation

The researcher attended seven conferences as a non-participant observer. Conferences were held at Anglicare's Yarraville office, or at a location convenient for the participants, roughly equidistant from victims' and offenders' homes. An important aspect of the conference site is that it be on 'neutral territory' — a community centre, for instance — to reinforce the non-threatening and inclusive nature of the process. Similarly, the physical layout of the conference is significant in symbolising notions of equity, fairness, and impartiality, and to minimise potential stigmatisation of the offender and their party.

Before the conference participants arrive, the convenor arranges the room "to create the atmosphere" for the conference (Anglicare, 2002, p.27). This includes arranging the chairs in a circle, providing tissues and water, ensuring privacy and minimal distractions. Name tags are provided with first names only, "to encourage informality", and "to signify that everyone is on the same footing" during the conference (Anglicare, 2002, p.27). A seating plan¹⁰⁹ is pre-arranged, taking note of any wishes expressed by the young person or

¹⁰⁶ See appendices 5 to 9.

¹⁰⁷ Constraints included having to arrange 'last minute' meetings, at locations too far for the researcher to attend at short notice.

¹⁰⁸ This usually occurred between one and three weeks before the scheduled conference.

¹⁰⁹ Figure 5.1 depicts a typical conference setting.

victim prior to the conference (Anglicare, 2002, p.27).

The conference has important ceremonial impact on the offender, victim and other participants, reinforced by certain symbolic aspects of the process (Anglicare, 2002, p.26). The placing of the seats close together in a circle or oval, for instance, without tables or other obstructions, which can “inhibit emotional expression because they obscure body language and can be used as protective barriers by participants”¹¹⁰ (O’Connell et al. 1999, p.47). This circle symbolises the collaborative nature of the process and the “group synergy” (Anglicare, 2002, p.27) it aims to generate.¹¹¹ Further, providing tissues for participants signifies that emotional expression is acceptable and encouraged, and shared refreshments reinforce the informality and the reintegrative potential of the conference (O’Connell et al. 1999, p.50).

In terms of the symbolic use of language, some practitioners warn against using the term “offender” to refer to the young person during the conference, deeming it stigmatising (see, for example, O’Connell et al. 1999, p.36, 112, 161). This is a matter for the personal discretion of the convenor rather than a strict protocol enforced by Anglicare practice. It is suggested, however, that in their opening statement the convenor should:

begin to separate the young person from the offence by discussing the importance of the conference examining the full impact of the offence on others ... and the young person (Anglicare, 2002, p.27).

A focus on separating accountability from blame is also established by

clearly linking the need to share information on and understand the factors that lead to the offence ... to hold the young person accountable (Anglicare, 2002, p.27).

These emphases indicate the extent to which conferencing practice is

¹¹⁰ One young person, during the follow up interview, said he expected the conference to be in a small room with a table, and expressed his discomfort at feeling vulnerable, having nowhere to hide, with “everyone looking at me... there were heaps more people than I thought there’d be” (C’s interview).

¹¹¹ The circle, according to O’Connell, Wachtel and Wachtel, also symbolises community or “coming together” (1999, p.47).

informed by labelling principles.

As observer, the researcher took note of:

- the physical setting of the conference, its participants and their relationship to one another;
- interactions, both verbal and non-verbal, between participants;
- the physical and interactional relationship between the young person and their family members;
- any changes in these during the course of the conference.

This involved taking mental and written notes,¹¹² which provided essential contextual data in which to locate the interviewees' reported experiences and perceptions. Rather than developing an observation protocol¹¹³, the researcher decided to use a flexible record of observations (Neuman, 1997, p.363-6; Scott & Usher, 1999, p.104). At the beginning of each conference, the researcher's note-taking presence was explained briefly to participants.

(ii) Interviews

In-depth interviews were conducted with four young people and members of their family and support network: A, C, D and E; A's grandmother and youth worker; C's father; D's father; and E's parents. These interviews were face-to-face (except E's, and conversations with G's mother, by telephone). It was found that the young people's desire to participate in the study waned over time, which meant interviews took much longer than anticipated¹¹⁴and, in some cases, did not eventuate (B, F and G).

¹¹² These notes were transcribed as soon after the conference as was practicable: from within 24 hours, to up to several days afterwards.

¹¹³ Observation protocols often take the form of pre-set, pre-determined 'tick box' schedules, deemed to be too distracting for the purposes of this research (see, for example, O'Connell et al. 1999, p.93-4).

¹¹⁴ The time period between the conferences observed and the interviews with young people and their supports ranged from six weeks to four months.

Interviews with conference convenors were conducted (in person, by telephone or email) for the purpose of gaining background information about the young person's family circumstances, the level and nature of their social support, their offending, the number of meetings held with the young persons and with their family members or supporters, and the nature of their response to the offending and to the justice process thus far, including their attitude towards the impending conference. This included a meeting with a former convenor who had left Anglicare in late 2002, but whose experience with and input into the program and its development had been formative. Face-to-face discussions and email interviews were also conducted with program management staff, as well as an in-depth interview with an experienced Legal Aid lawyer¹¹⁵ who had participated in numerous conferences run by the existing program and its earlier incarnations.

In the weeks following each conference, and after returning to court for sentencing, the young person and their family/supportive others were contacted to arrange a time for the interviews to be conducted. This usually occurred in the home of the young person¹¹⁶. Where family members were present, the young person was always interviewed first. This decision was based on a perceived need to subtly and symbolically reinforce the central place of the young person in the research process, as well as promote a sense of the value and importance placed on what they had to say.

Each interview was prefaced by a brief introduction explaining the purpose, reiterating its voluntary nature, confidentiality and anonymity, and requesting permission to tape-record the meeting. The interview schedule opened (in the case of the young persons' interview) with a series of demographic type questions¹¹⁷, asking about the young person's age, schooling, employment, and particular language, ethnic or cultural identification. These served as 'ice-breakers' — questions that neither challenged the young person nor required them to think too deeply about a response.

¹¹⁵ This lawyer was interviewed since she was unable to attend the focus group.

¹¹⁶ One youth worker was interviewed at his workplace; one young person was interviewed over the telephone since a face-to-face meeting could not be arranged.

¹¹⁷ These demographic type questions were included at the end of the family members' interviews; see appendices 10 and 11 for interview schedules.

Part of the study's focus is on conceptions of 'family' and how these overlap with young people feeling supported by others, both in their daily life and throughout the conference process. In order to glean this information, the researcher asked the young people about their home and family situation. The purpose of these questions was to tease out assumptions about living with, being related to, feeling comfortable around, having a sense of connection with, and feeling supported by others; to enable the young people to impart their own meanings and conceptions of 'family'. It was also to identify the extent to which a young person's concept of 'family' coincided with the main sources of support and control in their lives, and the extent to which other social bonds were identified as either supportive, encouraging, affirmative influences, or those acting as a restraint, inhibiting or moderating their behaviour. In this way the study aimed to determine the degree to which 'family' could be imputed as a source of social control.

Aspects of the interview process facilitated the elicitation of data and enabled the verification of meaning. The first involved establishing rapport: openness on the part of the researcher served to build trust and encourage reciprocity. Direct eye contact, for example, and a friendly but respectful demeanour conveyed a sense of genuine interest in what the person had to say, and that they were being listened to. A light-hearted approach, too, fostered a relaxed atmosphere in the interviews within which the participants were given confidence to speak freely and openly. Probing, reflective or reframing questions were used to encourage interviewees to elaborate, explain and clarify the meaning of their words or expressions.

(iii) Focus group

This forum was convened in order to gain a general overview and impressions of young people's family engagement in the conference process, from the perspective of professionals with knowledge and experience of conferencing. These included police, legal representatives, magistrates, youth workers,

victim representatives¹¹⁸ and conference convenors, invited to participate by way of a formal letter of explanation.¹¹⁹ Individual interviews were conducted with some of those who were unable to attend, as indicated above. Department of Human Services (DHS) Juvenile Justice workers were invited to participate as well, but following enquiries into the ethics requirements for involving Juvenile Justice staff or clients in research, this was deemed to be incompatible with DHS criteria¹²⁰.

The focus group was held at a conference room at RMIT's city campus, being central and accessible. After welcoming and introducing each person, the researcher (facilitator) briefly reiterated the study's focus on the experience of young people and their families (or significant others), in and after the conference, then outlined the format and purpose of the focus group. Each person was provided with an agenda for the meeting and a set of ten questions. Included in the agenda was a list of key terms and an explanation of their meaning in the context of the research¹²¹. The questions — about the impact of family members' involvement in conferences, and notions of conference 'success' and 'reintegration'¹²² — were introduced as being intended to stimulate discussion.

Before embarking on this stage, participants were asked to read and sign a form indicating their informed consent to participate, and to having the discussion tape-recorded. The issue of confidentiality was also confirmed, in that any information relating to actual cases or individual clients would not be used in a way that could identify them. The researcher then posed the questions, one at a time, and participants were invited to share their own

¹¹⁸ Although the study was focused on offenders and their support networks, rather than on victims and theirs, it was perceived that since victim support workers have valid insights into the workings of the conference process from their professional perspective, and in light of the significance of victim input on the experience of the conference for the young person, they were invited to participate.

¹¹⁹ See appendix 12: Invitation to participate in focus group.

¹²⁰ Since technically young people are only Juvenile Justice (JJ) clients once they have been placed on a supervisory order or a probation order or higher in the sentencing hierarchy, the Anglicare conferencing program clientele — young people *at risk* of receiving such a sentence — did not actually include JJ clients. Therefore the scope of this research appeared outside the ambit of the Juvenile Justice research protocol developed by the DHS in 2002. This information was received in a telephone conversation with managerial staff member of the Juvenile Justice branch of the Department of Human Services (19/5/03).

¹²¹ Key terms included 'young person', 'victims', 'young person's support network', 'reintegrative shaming', and 'stigmatic shaming'. While some of these might seem a bit obvious, some room for ambiguity (for example, 'young person' and 'victims') required that these concepts be made clear in the context of the study; see appendix 14: focus group agenda.

¹²² See appendix 15: focus group questions.

thoughts and experience. The discussion took place over two hours, throughout which notes were taken by the researcher (to guard against the loss of data in the event of an electronic malfunction). The recording was later transcribed and compared to the written notes to ensure accuracy, ready for analysis.

4.6.3 Data analysis

Bartlett and Payne's set of procedures for grounding theory (1997) provided a useful map to guide the process of abductive data analysis (Scott & Usher, 1999, p.42). Following the initial steps of data collection and transcription, categories of data were developed using open coding, that is, the raw data were organised into conceptual categories from which themes were drawn (Neuman, 1997, p.422). Observational notes and transcripts of conferences, interviews and the focus group were read slowly and meticulously; critical terms, key concepts and preliminary themes were noted, stemming both from the original research questions and literature reviewed and the terms used by research participants themselves. Care was taken to record these initial concepts in lay terms, in a list of themes faithful to the subjects' own meaning, without conceptual elaboration. After each category was saturated, in that no new examples emerged from the transcripts, the process of formally defining each category in terms of its properties and dimensions began. This was also the stage at which theoretical templates were introduced, superimposed over selected categories in order to test and tease them out further.

The next step involved the drawing of connections between categories through axial coding (Scott & Usher, 1999, p.42; Neuman, 1997, p.423). In this process themes were organised and axes developed along which key concepts were aligned. In thus developing conceptual relationships, moving from first to 'second-order constructs', the process of abductive reasoning emerged as "a 'going beyond' the way of understanding developed by the social actors under scrutiny" (Scott & Usher, 1999, p.49). In the weaving of this conceptual web, in which each core category formed the hub of a nexus, links were drawn with established theory, whereby technical explanations translated the participants'

accounts of their perspective and experience. The raw data was then revisited in order to validate these interpretive constructs against the original transcripts and notes — the process of grounding emergent theory in the data. The final step of ‘filling in the gaps’ involved retracing these steps to ensure that all elements of the data were accounted for and the links between them were fully developed and interpreted. In this way the original meanings inherent in the data were represented as faithfully as possible, notwithstanding their theoretical translation.

4.7 Reliability and validity — establishing trustworthiness

Lincoln and Guba deem “credibility, transferability, dependability, and confirmability”, more useful tests of an interpretive, qualitative approach than the traditional positivist criteria of internal and external validity, reliability and objectivity (1985, p.189)¹²³. In essence, they represent the same principles (Scott & Usher, 1999, p.150). In order to deflect the widest range of potential criticism, however, each of these issues has been considered throughout the research process. Fairness also guided this research, whereby the various participants’ perspectives were given equal consideration (Guba & Lincoln, 1989, in Scott & Usher, 1999, p.152).

An essential ingredient in Lincoln and Guba’s criteria for trustworthiness (1985, p.189, 218) is transparency, or openness (Chenail, 1995, p.1), which is grounded in reflexivity — making clear the position of the researcher in relation to the researched. As McWilliam writes,

Qualitative research is subjective in two important ways: the researcher serves as the instrument or the lens, and the reader serves as the reliability and validity judge (2000, p.77).

This requires making explicit the researcher’s own interpretive perspective, with its theoretical and epistemological underlay. These terms, however, mask

¹²³ Lincoln and Guba (1985) describe their four tests of trustworthiness as “naturalistic analogues” (p.189), better suited to naturalistic epistemology than the traditional positivist criteria: “credibility” replaces internal validity; “transferability” instead of external validity; “dependability” in place of reliability; and “confirmability” rather than objectivity (p.219).

“the personal biography of the gendered researcher”, whose social and ethno-cultural background orients her interpretive position and thus “configures ... components of the research act” (Denzin & Lincoln, 1994, p.p.11). Documented in the spirit of openness, therefore, are the issues that informed methodological choices and other (frequently confounding) factors that shaped the research design.

Multiple research methods were employed in order to increase the depth of understanding the study yielded. Applying principles of triangulation¹²⁴, “the use of multiple lines of sight” serves to strengthen the validity of data gathered (Berg, 1989, p.4), or its credibility, according to Lincoln and Guba’s rationale (1985, p.219). The use of intra-method data triangulation — by gathering interview data from multiple sources — aimed to fulfil this purpose, as did the use of observation, interviews and a focus group as an inter-method application (Denzin, 1978, p.295, in Berg, 1989, p.6). Tape-recording supported the accurate transcription of data, and allowed for future auditing of the material by which ‘dependability’ and ‘confirmability’ may be established (Lincoln & Guba, 1985, p.219).

Issues of reliability, or dependability, arise from the “selective process of interpretation” (Bilton et al. 1996, p.122), which interpretive techniques such as observation necessarily entail. Two strategies address these issues: first, the technique of “respondent validation” (Scott & Usher, 1999, p.150), or “member checking” (Janesick, 1998, p.68), to support the credibility of findings (Lincoln & Guba, 1985, p.219). During the interviews, this took the form of “reflective probing” — reframing or reflecting the answer back to the respondent to clarify meaning and check the researcher’s interpretation of a response (Minichiello et al. 1995, p.92), as exemplified in this extract of an interview with a young person’s father¹²⁵:

Q: Has the conference helped in any way to repair the damage done?

¹²⁴ An important methodological concept describing the use of two or more different methods to study the same phenomena, assuming no *one* method is infallible and thereby ensuring more conclusive results (see, for example, Denzin, 1978, in Patton, 1990, p. 187; Denzin & Lincoln, 1994, p.2, 12; Neuman, 1997, p.151).

¹²⁵ This excerpt taken from the interview with D’s father.

A: “Um, oh yeah, you know, I suppose I forgive and forget to a certain degree... [wry laughter]”

Q: *...so you’ve been able to kind of move on?*

A: “Move on from there, yeah”

The second strategy, applied when meaning is drawn out and significance explored through the abductive process, involves the acknowledgment and analysis of the researcher’s own position via the in-built self-reflexive mechanism (Bilton et al. 1996, p.124; Ganguly-Scrase, 1994, p.37). This notion of reflexivity is central to concerns about reliability in qualitative enquiry; social research is, after all, “an interpretation of interpretations” (Denzin & Lincoln, 1994; Scott and Usher, 1999, p.27). While inherently reflexive by engaging in dialogue with its subject, research does not always make this manifest¹²⁶. It requires qualifying the telling of others’ stories by reflecting on the researcher’s own position and perspective, and acknowledging her subjectivity, rather than trying to be ‘objective’ in the meaning-making exercise. For, as Scott and Usher contend, it is “through the inter-subjective relationship between the knowing subject and the object to be known” that truths are grasped (1999, p.28). Therefore a ‘truthful’ and thus reliable or dependable interpretation requires the presentation of the “standpoint or situatedness¹²⁷” (p.29) of both the researcher and the researched, so that the reader can enter into the dialogic process whereby meaning was constructed, to as full an extent as possible.

4.8 Ethical issues

Strict ethical guidelines set out by RMIT University Ethics Committee were observed in the proposal and implementation of the research. Issues to be considered included: concerns surrounding the interviewing of minors; discussion of offences and the attendant issue of disclosure; and maintaining confidentiality and the anonymity of research participants. Initial contact

¹²⁶ According to Scott and Usher, this is “largely due to the influence of positivism and technical-rationality” (1999, p.29), which, by presenting an idealised model of scientific study, exerts subtle pressure on social researchers to omit the contextual “stuff” of their research, and to aspire to an ‘objectivity’ that can only render a sanitised and rationalised depiction of a complex human reality.

¹²⁷ Scott and Usher’s “situatedness” refers to “time, place, culture, gender, ethnicity, etc.” (1999, p.29).

made with the convening agency, Anglicare Victoria, sought permission to conduct the research. At this early stage it was important to impress upon program staff the researcher's understanding of the inherent sensitivity of issues involved in observing conferences and interviewing participants, especially young people.

All research participants received a plain language statement, describing the research and assuring confidentiality; and a consent form, requesting agreement to participate in the research, in writing, to be co-signed by a parent or guardian if the person was under eighteen. In preparing interview questions, different schedules were required to be drafted for each category of participant: for the interviews with young people, family members, significant others, and conference convenors; as well as the list of questions used to stimulate and facilitate discussion in the focus group. It was important to use a different style of language and communication when explaining the research to a young person, for example, to that used to invite legal professionals to participate in a focus group. Following ethics approval by RMIT University, each of these documents were forwarded to Anglicare for approval before the particular phase of the study commenced¹²⁸.

4.9 Conclusion

Any study of young people, but particularly of young people involved with the criminal justice system, will encounter barriers. In Victoria, for instance, the pre-sentence mode of conferencing meant that the young people involved in the program were midway through the justice process. Their imminent return to court for sentencing inevitably and understandably created feelings of tension and anxiety that militated against their willingness to participate in any kind of research. Issues of trust and suspicion, power and agency, confidentiality and anonymity, all coloured the research experience. The study's focus on young offenders and their families, and the particular characteristics of the research setting, magnified inevitable difficulties of negotiating access to human subjects. As issues discussed throughout this

¹²⁸ See appendices 4 to 15.

chapter testify, the ongoing negotiation of access became part of the data collection process (Maso, 1990, in Delamont, 1992, p.92), and therefore had a significant impact on the research as a whole.

CHAPTER FIVE

Disgusted, Ashamed, Proud, Sorry...

5.0 Introduction

The first part of this chapter outlines features of the research participants and sketches a profile of the conferencing program's clients, noting similarities and variations. The second provides contextual background to the sample, beginning with an account of the offences (and related factors) around which the conferences were convened. A definition of 'family', in the research context, prefaces a series of 'family portraits' depicting characteristics of the young people's domestic circumstances. This information derives from discussions with the young people and their supportive others (including family), as well as background provided by program staff and conference observations. The seven young people are given pseudonyms of letters from A to G, for the purposes of anonymity and to ensure confidentiality¹²⁹. The third section centres on the observation of the seven conferences. Details of the various participants precedes a description of the conference process, fusing multiple observations into an exemplar with illustrative highlights from individual cases. The adjectives in this chapter's title — disgusted, ashamed, proud and sorry — exemplify the feelings aroused during the conferences. This emotional context, within which participants' emergent stories reveal frequently divergent perspectives, is examined briefly.

5.1 Research participants

Key aspects of the research sample are summarised in table 5.1 (below). Shown are the offenders' gender (male), age (from 13 to 16 when they offended, and between 14 and 18 at the time of the conference), and the offences they were charged with. None had been arrested before. Included as well are the people (family and others) who supported each young person in

¹²⁹ These alphabetic aliases do not correspond to the initials of the young people's names, but simply serve to distinguish one from the other in the discussion.

their conference, and the participants with whom the researcher was able to conduct post-conference interviews. Also noted is whether the outcome plans were fulfilled within a three month period.

Table 5.1 Research participants¹³⁰

Conference observed	Offender's gender	Age at time of offence	Prior arrests	Age at the conference	Supporters present at conference:	Offence:	Participants interviewed:	Outcome plan fulfilled ¹³¹
'A'	M	15	No	16	Grandmother, Aunt, Youth worker	Burglary, theft from MV, criminal damage.	Yes (all except aunt – not available)	Yes
'B'	M	13	No	14	2 women he lives with (not related)	Assault	No (consented, but later not available)	Yes
'C'	M	15	No	16	Dad	Armed robbery	Yes	Yes
'D'	M	14	No	15	Dad	Criminal damage, theft, going equipped to steal.	Yes	Yes
'E'	M	16	No	18	Mum & Dad	Assault, affray	Yes (parents in person; YP by phone)	Yes
'F'	M	14-15	No	16	Mum & Dad	Theft of MV, theft, driving unlicensed, arson	No (consented, but later not available)	Yes
'G'	M	15	No	16	Mum & Dad	Criminal damage, burglary, arson	Telephone conversation with mother (consented, but later not available)	No

5.1.1 Program client profile

As earlier mentioned, the researcher intended to present information about

¹³⁰ MV stands for motor vehicle; YP stands for young person, i.e. offender.

¹³¹ Compliance with the outcome plan occurred in the three month post-conference follow-up period.

the clients referred to Anglicare's conferencing program, to compare the sample with the young people who did not participate in the research. Since precise data was not directly available, the researcher asked program staff to paint a general picture of their clientele based on their experience with the program. One convenor, who had organized twelve of the sixteen conferences between late 2002 to mid 2003, was able to provide some information. The details presented below were supplied in electronic interviews with members of the conferencing team.

The types of offences for which young people were referred to the program in that time included stealing motor vehicles, aggravated burglary, assault, criminal damage, affray, arson, and theft. Generally these were first offences (occasionally young people had received police cautions in the past, though this was not common). In some cases the young people had been in trouble repeatedly in other areas of their life, such as school or with their parents. The most frequently encountered scenario, however, involved getting "mixed up with the wrong people at the wrong time ... it was and will be an only time" (convenor, email 30/5/03). Offenders' ages ranged from 13 to 17, the majority aged 15 or 16.

Most young people referred to the program were male – only two of the twelve cases involved female offenders and both these related to the serious crime of aggravated assault. Evidently, girls who committed offences and faced Children's Court either had an extensive offending history, or were more likely to have left home and subsequently lack a strong support network, factors which would preclude their participation in the conferencing program. According to the convenor, both a prerequisite and a determinant of a successfully convened conference is the ongoing support of either family members or significant others:

The nature and level of support has been very high and is a criteria for the success ... [conferencing] is a very stressful way to deal with offending behaviour and the young person does need to have that support in place to help them through the process. (Convenor, email, 30/5/03)

In terms of outcomes, one measure of the program's "success", according to Anglicare, is the high level of young people's compliance with their agreements:

all our clients¹³² have fulfilled their outcome plans over the three month follow up period... [Five young people who reoffended after returning to court for sentencing] also completed their outcome plans and then reoffended after the three month follow up support (Anglicare team leader, email, 20/6/03).

Of the conferences observed by the researcher, six of the seven young people fulfilled their agreements within the three months. The one who did not, 'G', also reoffended in that time.

From this brief anecdotal account of Anglicare's conferencing clientele it would appear that the young people who participated in this study were fairly typical in age, gender, type of offence and offending history, as well as fulfilment of their agreements. While not claiming to be representative in a statistical sense, the sample can be seen as a 'snapshot' of a client group characterised by features noted above.

5.2 Background factors

5.2.1 Offending characteristics

The following paragraphs briefly present characteristics of the young people who participated in the study, in terms of:

- their age and offences;
- factors associated with their offending (for example: drug/alcohol use, peer group, poor school adjustment/attendance);
- health or developmental issues; and
- other details relevant to the offending behaviour.

¹³² This referred to the period September 2000 to June 2003.

‘A’ was fifteen at the time of his arrest for a series of offences over a two month period including burglary and theft from motor vehicle: with three other boys he broke into two houses and stole a video cassette recorder (VCR), video cameras and cash; he also, with co-offenders, stole from and caused extensive damage to several cars, including “badging” (stealing the vehicle emblem) and breaking into one belonging to the sister of a boy he knew. According to A, he had just left school, was not working, and was “hanging with” fifteen or sixteen young men who had also left school or “wagged” (played truant). These youths comprised two peer groups: one in A’s own neighbourhood; the other he associated with when visiting his father’s home. According to the arresting police officers, this was a “bad crowd” A was hanging around with, many of whom had subsequently been imprisoned or “gone quiet”. The reason A gave for burgling one victim’s house was that he “needed” (wanted) money to buy clothes from Victoria Market.

‘B’ was thirteen years old and under the influence of alcohol when he committed a violent assault against a twenty-four year old man who was not known to him. B had been drinking in a park with friends on the night when they went to a nearby train station, where they started throwing rocks across the platform at the victim. B then crossed the tracks and attacked the victim, who was also drunk, smashing the victim’s face with a rock held in his hand. At the time B had been living on the street and sleeping in cars for three or four months, having been fighting with his parents. He had been neither attending school nor working, doing little during the day and drinking at night. His predominant state of mind at the time was anger — mainly towards his parents, and for not being able to live at home. One of his friends, with him on the night of the offence, described him when he had been drinking as “like a freight train out of control when he gets angry”. According to the arresting officer, he had been associating with a group of youths known to the police for a range of incidents, such as train station attacks, which had given rise to safety fears in the local community. When arrested and interviewed, he admitted attacking the victim, and gave the reason for his actions as: “him asking me to look at my dick”.

‘C’ was fifteen when he was charged with armed robbery. On the night, he and a co-offender had armed themselves with the metal handles of supermarket shopping trolleys, “for protection”. They had approached two youths they knew; C asked for a cigarette while the co-offender asked for the victim’s mobile phone, which he handed over when they threatened him with the metal bars, saying he didn’t want any trouble. The phone was subsequently found in C’s possession when he was arrested. His father attended the interview on the night, during which C made partial admissions. The co-offenders’ versions did not quite match the victim’s version (in that the co-offender claimed to have apologised, which the victim denied); no reasons were given for the assault. C said that he and his co-offender had wanted to give the phone back to the victim, but when they turned around they couldn’t see him anymore. C’s explanation of his involvement in the offence was,

[co-offender] was getting loud and that — I just walked up and joined in.

From his father’s perspective,

He was with the wrong boy at the wrong time. His other mates are good — they’re in a band together, play music... With [co-offender] it’s a case of ‘follow the leader’.

The co-offender, with whom C now has no contact, participated in a separate conference immediately after C’s. He did not wish to take part in the research.

‘D’ was fourteen when he was charged with criminal damage and theft after he, his step-brother (aged 16) and a friend of the step-brother’s (aged 18) went for a walk late one Friday night, carrying a pair of bolt cutters. They vandalised and stole from some heavy earth-moving machinery they came across, causing damage in excess of \$7000. D cut his hand and they returned home to treat it, cutting through a wire fence on the way. A safety vest taken from the site was later found under D’s bed. The most damage was caused to a back hoe which was owned privately by a contractor (his sole source of income), who is seeking compensation for his loss (costs of around \$3000 for

the hire of a new machine, insurance excess and increased premium, and solicitor's fees — not including the damage to the machine of over \$6500, covered by insurance). When arrested the next day, D offered no explanation for his actions, telling police:

[for the criminal damage] I don't have a reason; [for the theft] they were there; [and for going equipped to steal, the bolt cutters] might have come in handy later.

In the conference, D related the lead-up to the incident:

We were sitting at home, bored. Played Nintendo for a bit, then decided to go for a walk. We saw the bolt cutters on the way out and decided to grab them...

At the time of the offence he had just left school.

'E' was sixteen when he was arrested with two co-offenders (also 16) for a serious assault with racial overtones. According to the police informant, he was lucky he qualified for Children's Court (due to his age); otherwise he could have been tried in the County Court and may have faced a custodial sentence. The three boys consumed alcohol at the engagement party of the mother of one of the co-offenders. Leaving the party, drunk, they drove away in one boy's aunt's car, which they smashed and left in the carpark, stealing from it a mobile phone and stereo, although E claims he was not involved in this incident. Walking to a nearby freeway, the boys attempted to hail a taxi. The taxi driven by the victim (carrying two passengers) was forced to slow down when the boys stood in front of it; E kicked the car as it passed. When the taxi then did stop, E and his co-offenders ran to approach it, yelling abuse and assaulting the driver and passengers with fists, kicks, and butter knives they were carrying (which they had brought from the function earlier). The taxi's card imprinter was also grabbed and used to assault the driver, who was in fear for his life. The taxi driver was racially insulted as well, although according to E,

It wasn't me — it was [co-offender] definitely. I didn't call him an Arab or anything...

The passengers and other witnesses restrained the boys until the police arrived; the butter knives were found, though no admissions were made. E was interviewed that evening; he showed no remorse and denied all charges. In the conference, E's explanation of how it happened includes this rationalisation:

All it takes is three sixteen year olds and too much to drink — went stupid.

'F' was fourteen and a half when he was involved in the first of a series of offences committed over a period of nine months: the theft of a motor vehicle (two charges); theft; unlicensed driving (two charges); and criminal damage by fire (arson). In the first incident he stole a screwdriver and shifter from a supermarket and used them to steal a car from a nearby hospital carpark; he drove to meet a friend, who then smashed the car, causing damage to two others. He was arrested at home a month later. A month after that, F and a male co-offender were at a supermarket where a female co-offender worked, who scanned packets of cigarettes then cancelled the transaction; F was charged with theft. The reason for his actions: "I was with [male co-offender]".

Five months later, while driving, F and his friends saw a parked station wagon. When F's co-offender said he "wanted to blow it up", they stopped, put paper in the fuel tank and lit it. They drove away, stopping further down the road to look back; apparently, however, the fire had gone out. The three drove to a service station and bought fuel and matches before returning to the station wagon, where they found a security guard trying to extinguish flames and the police in attendance. F and his friends watched, waited until the police had left, then emptied the fuel onto the seat of the station wagon and lit it; a fire started and the three fled the scene. F was arrested and admitted the offence, claiming he had been pressured by his friends. In the final incident, two months later, at his mother's house, F took his brother's keys and his late model ute, which he drove, unlicensed, to his friend's house. No damage was

caused and he made “full and frank admissions”. Police consistently noted F’s demeanour as “good, cooperative”.

At the time, he was feeling bored,

didn’t like school much... [and I had a] lot of anger inside me — I don’t really open up and anger builds up inside me.

Furthermore, as his mother recounts, he was experiencing a lot of peer pressure, from one boy in particular¹³³:

[his co-offender is] three or four years older — that was difficult ... the best thing has been getting away from him.

‘G’, aged 15, was charged with burglary and arson: he and a co-offender broke into a house, in the completion stages of being built, and tried to start a small fire with some paper and a lighter they had brought with them; when it didn’t light, they left, after which the fire took hold and spread to the adjoining lots. The resultant blaze caused over \$300,000 damage to three townhouses. Earlier in the day G had met up with his co-offender at a park, where they skateboarded and lit a supervised fire¹³⁴; they were subsequently banned from the park after throwing eggs at a passing taxi. According to G,

we went to the building site — mucked around ... [at] the townhouses [co-offender] suggested we light a little fire....

The two were arrested at the scene; G made admissions, although his co-offender blamed G. The police described him as cooperative; his reasons for his actions: “just mucking around, having a bit of fun”. G’s Attention Deficit Hyperactivity Disorder (ADHD) has a significant bearing on his behaviour and cognitive capacity. At the time of the offence, G was struggling academically and not enjoying school.

¹³³ In his conference outcome plan, ‘F’ includes a point confirming that he is “no longer associating with” this co-offender.

¹³⁴ No further details were given about this ‘supervised fire’; presumably an adult was present to oversee such activities, and was the person who banned the boys from the park for throwing eggs at cars.

5.2.2 How ‘family’ was defined

Though traditional conceptions of family hinge on kin relationships, in the context of this research, ‘family’ describes the individuals with whom the young people felt and acknowledged the closest sense of familial connection and support. It was not assumed that this would necessarily comprise immediate blood relatives or next of kin. Within the sample, however, little divergence was apparent. Notions of ‘family’ did range from immediate kin to individuals connected to the young person through family and community relationships, with whom they had developed a sense of familiarity and trust. Yet only one of the young people was supported at his conference by ‘significant others’ who were not kin relations (see table 5.1). The implications of different ways in which ‘family’ may be constructed — in light of the concepts of ‘family’ reported in the sample — are explored more fully in the following chapter.

5.2.3 ‘Family portraits’ — snapshots of the sample

Presented below are ‘snapshots’ of the circumstances of each of the young people around the time of their conference¹³⁵. These word pictures serve to contextualise the findings, providing background in terms of their domestic situation, social support and relationships with family members and significant others. Prior to each conference, the convenor has met with the young person alone¹³⁶, the ‘family’ group, and the family/significant others alone. Information gleaned during this preparation phase is provided here with permission. Comments noted during the conference and in conversations with participants are also included where these shed light on family issues. To avoid repetition, the young men described below, unless otherwise noted, are of Anglo-Australian ancestry and cultural background; one family originated

¹³⁵ Conferences were held around twelve and up to eighteen months after the offence/s, depending on the time between the offence, arrest and court hearing; conferences were usually held within an eight week period of adjournment following the court referral.

¹³⁶ Up to five times, depending on the young person’s attitude, degree of responsiveness and engagement with the process, including the level of remorse and responsibility taken for the offence, their desire to meet and make amends with the victim/s, and their willingness to actively participate in the conference (Anglicare, 2002, p.11).

from New Zealand.

‘A’ lives with his grandmother — call her ‘Nan’ — his primary carer. Over fifty, she is in neither paid nor unpaid work outside her home. His aunt lives nearby (with her family) and maintains close contact, telephoning daily and regularly taking Nan to do her weekly shopping. According to her, though she supports A and loves him dearly, she is “the angry person in the family”, while his Nan has a softer nature.

A was eighteen months old when his mother was killed in unusually traumatic and violent circumstances. He and his father suffered minor physical injuries in the event. Due to his father’s subsequent emotional distress and period of alcoholism, A lived with his Nan until he was about three and a half; his father then remarried and A went to live with his Dad and his stepmother.

According to A’s grandmother, when A was about eleven he was expelled from the local high school. His father gave her an ultimatum: “you take him or I put him in a [foster] home”. A has been living with his Nan since then, apart from a brief spell when his aunt kicked him out of his grandmother’s house after he was arrested, during which time he was “couch surfing” (staying with various friends), according to his youth worker.

A’s relationship with his father is non-supportive. He is hostile towards his stepmother and indifferent towards his half siblings (his father has had four children with his second wife). Since getting into trouble (that is, for the last year or so), A has had nothing to do with his father, which according to his Nan is a good thing. She states that A gets “no support” from his father, “no control, no boundaries”. She believes that A

needs someone stronger, a male role model, a father figure who doesn’t brag about being illiterate, about how many times he’s been in jail, about how many cars he and his mates have knocked off...

In terms of daily home life, Nan describes A as communicative “most of the time”, although:

Sometimes he's a bit quiet, doesn't want to talk, sits in his room listening to music...

Although describing difficulties in bringing up her grandson — such as not having enough money to buy him things — in providing food, warmth and shelter, and emotional support, A's grandmother represents a constant source of stability for him, a home. As she sums it up:

we haven't got loads of money, but there's nothing he wants for... there's plenty of food, a warm bed — he's looked after better than he ever has in all his life.

A was referred to the JPET¹³⁷ program around the time of his arrest. Though initially “very cocky”, his youth worker reports, he decided to engage with the program and has shown maturity and initiative, finding himself a casual job and pursuing a literacy and numeracy program. A asked his youth worker to attend his conference.

‘B’s parents are unable to provide a stable home environment for him due to their addiction and related issues. Since the time of the offence he has been living with a woman he refers to as his ‘aunt’, though she is not related to him directly; she is the sister of his father's de facto partner, and lives with her two teenage daughters and a young female boarder who accompanied B to court and supported him through that process. B's ‘aunt’ says:

we care — he's got a home he can come home to, he belongs somewhere ...
he can stay with me until he's ready.

B's representative at the Children's Court is a private barrister who took the case as a Legal Aid referral because he has known B's ‘aunt’ and her family for years, having previously represented her son. The lawyer believed that probation was unnecessary because B's situation had improved — his

¹³⁷ The Job Placement Employment Training program (JPET) targets 15 to 21 year olds who are homeless or at risk of homelessness, as well as those who are currently in care or have been a ward of the State, an offender or a refugee. It is a program of the Australian Government's Department of Family and Community Services (see <http://www.facs.gov.au>).

extended ‘family’ were looking after him and providing what a probation officer would, that is, supervision and support.

In relation to his behaviour since the offence, B’s ‘aunt’ reports that: “I’ve had no trouble from him”; for instance, even though she has not asked him to, he lets her know how long he will be when he goes out, and calls to tell her if he will be home late. On the subject of B managing his anger in future, she wryly tells the conference group,

I’ve got this big stick at my place — they all know — maybe I need to keep that out for a bit longer!

When asked “will it happen again?” by the victim’s sister, B replies,

It won’t happen again; I’ve woken up to myself... pulled my act together — gone back to school, got myself a job.

Asked whether he still feels anger, B responds,

No, I’ve got somewhere to go; I’m happier — working about 8 hours a day...

As his ‘aunt’ affirms,

If he follows the path he’s on now, he’ll be right.

‘C’ lives with his father and older brother (18), and a mate of his father’s who also shares the house. C’s family are from New Zealand, where his mother still lives, and where they return every year for holidays. The rest of the family — C’s little sister, brother, cousins, aunties, uncles — all live in New Zealand. C speaks on the phone to his Mum every week; other sources of support include his Dad’s girlfriend, and a school counsellor who — despite her help and encouragement — C has chosen not to invite to the conference, wishing to have only his Dad present. C is in year ten at a local high school, and wants to get an apprenticeship as a carpenter when he leaves. The relationship between C and his “old man” is a supportive one, as his father describes:

Pretty good ... just like father son but mates as well...

In his father's words, C is

A pretty emotional boy... [He's like me], hard on the outside and soft on the inside ... he's a good kid...

While C's brother has "been in trouble with the cops before", C surprised and angered his father when he too was arrested, as C reports:

[he was] upset ... Dad told me he didn't think I'd do that ... he didn't think I was the same.

Health issues have had a bearing on C's family life, in that his father has been ill for some time with kidney disease. At the time of the offence he was undergoing treatment and was physically exhausted and virtually housebound. Since having had a kidney transplant he has been reasonably well, though is still unable to work.

'D' lives with his father (of Irish background), stepmother, and younger sister. His older sister lives in a nearby suburb with her boyfriend. His mother left four years ago after she met a new partner and moved overseas; D has not spoken to her since. According to the convenor, D

Doesn't really have much to say about step mum — she's there!! Dad doesn't seem to be all that supportive ... He hasn't attended any of the sessions that I've had with [D] ... [D] doesn't have much to say about dad either — he's around!!

According to his father, however, their relationship is "good":

...bike ride together, camp together, that sorta stuff... I work from home so I'm here all the time... [sometimes we] clown around ... We've always been pretty close because like his mother doesn't live here.

In terms of support in D's life, his father affirms:

...he works with my brother ... we're a big family, and anything he does do tends to be family-oriented ... [It's the] Irish blood.

D himself describes doing family things:

The whole family goes out and rides motorbikes — that's a thing we all go out an' do;

and feeling 'connected to' and supported by his Dad and by his boss (his Dad's brother). At the time of the offence, however, the person D felt he could most rely on was his elder sister, perhaps because his father, who accompanied him to court, was "pretty disappointed" and "fairly angry". Yet besides his Dad as support at the conference he chose not to have anyone else:

[my uncle asked] if I wanted him to come, but I told him it'd be alright.

Soon after his offence D began his apprenticeship, which he is now halfway through. He is required to attend TAFE for one week of every month, for a total of eight weeks; he has completed four weeks so far and is committed to continuing. In terms of school, he has been happier since he left and started working, describing what he does not like doing as,

anything that involves pen to paper. And computers, I don't really like computers.

His preferred activity is riding his motorbike, which he parks outside the window,

So I've got a perfect view of it! And I stare at it all day!

'E' lives with his parents and younger sister; he also has an older brother who lives away from home (neither sibling was present at the conference). The

conference occurred eighteen months after the offence was committed¹³⁸. E was not interested in studying at school and after continually getting in trouble, dropped out in year ten. He is now halfway through — and enjoying — an apprenticeship.

His mother works weekdays; his father rotating shifts, including weekends. While they both maintain that their relationship with E is good — “we communicate quite well” — since E is rarely home much anymore, the times spent together as a family are infrequent. When E is not at work or at TAFE, he is either training or playing football (he is vice-captain of the local club, to which he is very committed); otherwise he is going out with his friends, from whom he gets a great deal of support.

According to E, prior to his offence there were frequently arguments at home, fights with his siblings, though nothing serious. Since the crime, however, the arguing has ceased because E decided he wanted to stop getting into trouble and has started to listen to his parents more; as his father affirms, since the conference,

[We] can talk to him more openly — he might listen a bit better now.

In terms of his family’s reaction to the offence, according to E, his brother and sister were not concerned; his parents, however, were shocked, and E felt he had disgraced them. They had a ‘big talk’ with him after the incident and he says that his parents now worry about him when he goes out. Nonetheless, E feels a strong sense of support from his Mum and Dad; he says of being with his family,

I feel relaxed when I’m at home...

According to his father,

¹³⁸ According to the arresting police officer, one witness was difficult to track down which caused a delay in bringing the case to trial. Also, according to E’s parents, the conferencing agency requested more than one adjournment of the case while arranging the conference; this was due to staff turnover issues at the time (confirmed by convenor in email 1/2/03).

I think he's maturing — he's never been in trouble before and he hasn't since... Hopefully he'll be ... less anti-social, more sociable with the community... He's got a commitment with his car, he's finishing his apprenticeship.

In the conference, E expresses his remorse and reassures the group:

Can I just say something — I will never do it again, I just want to say, we're not really that bad guys, you know what I mean...

When asked whether alcohol is an issue, he responds confidently,

No, since I turned eighteen I've been out every week and no trouble. When you're young you're stupid — now I'm older, I'm more mature. That was the most I'd ever drunk that night.

'F' lives with his mother and older brother, who is 21, although his mother is soon to be moving out to live with her new boyfriend; the boys will remain together in the unit. His father lives ten minutes away with his fiancée and her daughter, also 21; F's relationship with both women is caring.

F's parents have known each other for thirty-five years; they married in 1975 and although they separated seven years ago, still communicate well. F and his brother chose to live with their mother, a custody arrangement settled out of court and which remains amicable. Both parents have been very supportive of F, as his mother confirms:

He's my son — no way am I not going to be there for him ... [the policeman] said, "how many times is your mum going to be here for you?" — I'm sorry, but I'll always be there.

Although they admit to being very disappointed with his offending, they can both understand possible reasons for his behaviour. Each hoped that the conference would help them all to better understand these, and provide an opportunity to apologise to the victims.

At the time of the offences F was, in his father's words,

going through a difficult time — he's six years younger than his brother — he doesn't open up — a lot of peer pressure ... Hard to talk to — the more he kept it in the more angry he got within himself ... He hated [school] — didn't want to stick it out ... The last seven months he's changed so much, he's a totally different person... Unfortunately it took these incidents...

His mother agrees,

He's changed ... entirely different kid ... [F] started work on Monday as an apprentice ... the change over the last six months has been amazing.

Previously his relationship with his brother was strained:

[his brother] didn't want him around — he bought a lock for his bedroom door.

Yet as time has passed and F has tried to prove himself worthy of his brother's respect, the relationship has improved and (according to his mother) his brother now wants him to live with him. F's brother, as his father tells,

[had a] dream to open a panel shop and a mechanic's workshop ... he threw the dream away but now he's got it back.

Hence, as well as committing to his apprenticeship and to attending TAFE, F's outcome plan includes a promise to his family:

To build a better relationship with [my brother], I will work on cars with him on weekends and nights to help him out...

F's brother did not participate in either the conference or the research.

'G' lives with his mother and father; he is an only child. According to the convenor,

[the] level of support from his family is great ... they both strongly believe in [G] being a good person.

When he was a child, G's parents decided it would be best for his mother to stay at home with him, rather than work, due to his many emotional and developmental needs. He has been diagnosed with ADHD; a psychiatric report rating his cognitive abilities in the low to average range¹³⁹. His parents have different styles of dealing with G; according to the convenor, his mother is

outgoing, loud, silly (in her words) and mucks around a lot with [G, who] feels more comfortable opening up with her. She knows when to ignore [G] while his 'moods' calm down.

His father, in contrast,

is very supportive in action by taking [G] to sports every single week... He is more disciplinary. He is constantly 'pushing' [G] to control his behaviour and understand the situation, and won't give up until he's got his message across.

G plays golf, cricket, and he did play football; according to his father, though

[his parents had] discouraged him from hanging out with losers ... towards the end of that year [when the offence was committed] — he'd stopped football [and had started] seeing these kids.

In his mother's words,

[G's] very immature for his age — he just doesn't get it ... It's very hard for us. [G's] going through a stage where he's anti-everyone, blames us for everything — we just don't get it, which is part of the problem. [G] is a difficult kid — he's got ADHD — he's never been easy ... We just don't know *why*...

Since the offence, G has left school,

¹³⁹ According to Rutter et al (1998), ADHD correlates strongly with adolescent offending persisting into adulthood; it is also linked to young people's poor social functioning in general (cited in YJB [Youth Justice Board for England and Wales], 2001, p.18).

Because I felt year 11 was quite difficult and I didn't enjoy it ... I've been trying to get a job. ... I don't want an apprenticeship...

As his mother explains,

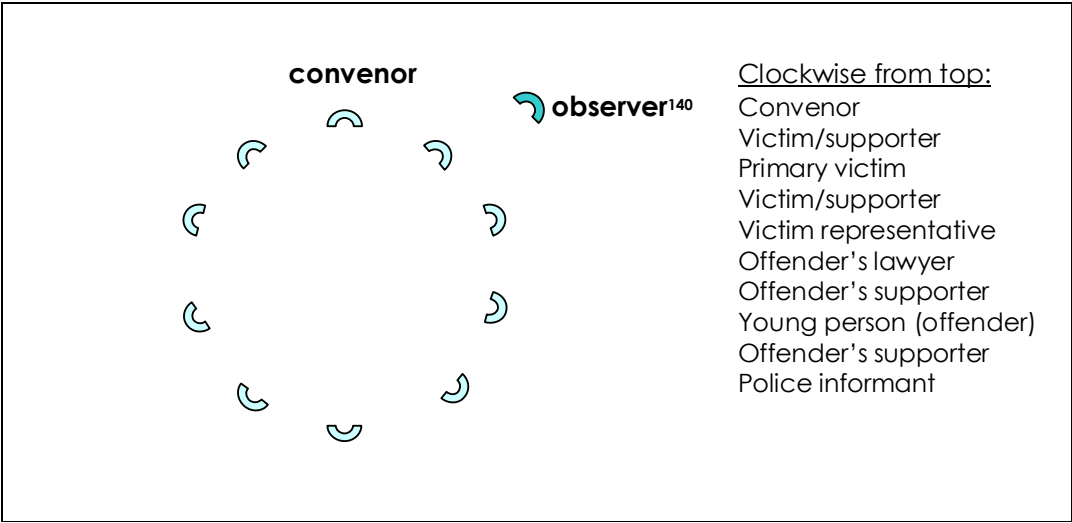
All term [G's] been working towards this [conference] process — we haven't pushed him into anything so he could focus on this ... Holidays are coming up [he's having] ten days away — after that, that's it, work or back to school or something — no more sitting at home [G is nodding his assent].

5.3 Observation of the conferences

5.3.1 Conference participants

In the observation of seven conferences, many common features were noted. Typically the seating plan took the form shown in figure 5.1, below.

Figure 5.1 Typical conference setting



To briefly summarise the information detailed earlier, the seven young offenders were male, aged between 14 and 18. All the families were native English-speakers and, despite one family originating from New Zealand and

¹⁴⁰ 'Observer' represents the researcher. Though only the researcher is depicted in this diagram, other observers similarly sat outside the circle, behind the conference participants.

another being of Irish heritage, no significant distinguishing ethno-cultural characteristics were noted. Each conference was attended by the young person and at least one supporter (see table 5.1); also by the young person's legal representative, as required by Anglicare practice, and a police informant (with the exception of officer unable to attend due to illness).

All were facilitated by a sole convenor, though the last three conferences observed were attended by a second staff member. These were the last conferences convened by Anglicare. As noted, the latter months of the tender period (from late 2002 until mid 2003) coincided with a time of high staff turnover. Whereas at one point the program employed two full-time and seven sessional convenors (in early 2001¹⁴¹), numbers were scaled down to just two part-time workers in the latter stages. This had significant implications for the training and experience of convenors, compensated for by the doubling up of staff in some instances.

At two conferences, a Victim Support Officer from the Victims Referral and Assistance Service (VRAS) attended on behalf of victims who were unable or unwilling to do so. Two conferences were attended by the primary victim along with a victim representative; and at three conferences the primary victim was accompanied and/or supported by secondary victims as well (the mother, sister and brother of one primary victim; the father of another; and in a case involving arson, where the primary victims' new house was destroyed, secondary victims were represented by two officers from the Melbourne Metropolitan Fire Brigade as well as the owner of the construction company). Apart from the researcher, conferences were sometimes observed by staff members from Anglicare¹⁴² or other agencies including VRAS¹⁴³ and Legal Aid¹⁴⁴.

Table 5.2, below, details the number of participants (and observers) in each conference, the implications of which are discussed in the next chapter.

¹⁴¹ This information was provided in meeting with Anglicare program staff, 23/4/01.

¹⁴² Anglicare staff members observed four of the seven conferences for training purposes.

¹⁴³ Two VRAS representatives attended one conference, one observed another.

¹⁴⁴ A lawyer, who had not previously observed a conference, attended to gain insight into the process.

Table 5.2 Participants in the conferences observed

Conference Observed	Total n° of participants	Offender	Offender's supports	Legal rep.	Primary victims	Secondary victims	Victim rep. ¹⁴⁵	Police informant	Conference convenor ¹⁴⁶	Observers ¹⁴⁷ (including researcher)	Total n° of people in room
'A'	9	1	3	1	1	-	1	1	1	2	11
'B'	11	1	2	1	1	3	1	1	1	4	15
'C'	8	1	1	1	1	1	1	1	1	2	10
'D'	7	1	1	1	1	-	1	1	1	2	9
'E'	8	1	2	1	-	-	1	1	1+1	2	10
'F'	7	1	2	1	-	-	1	-	1+1	2	9
'G'	13	1	2	1	2	3	1	1	1+1	1	14

5.3.2 Description of the conference process

Of the conferences observed, the format varied little. Each was scheduled to run for approximately two hours, and most were completed within this time with the exception of two which took up to an hour longer, due to the larger number of participants than usual (eleven and thirteen), and the high level of emotion aroused and expressed during the process. Differences arose in the personal styles of the convenors: how, for instance, they delivered their introductions and summaries. Any structural variables having a substantive bearing on the conference are discussed further in the chapter. The following describes an amalgam, a typical model of the conference process as witnessed by the researcher:

Each participant is given an agenda¹⁴⁸ indicating the order of proceedings; the convenor begins by introducing herself¹⁴⁹, welcoming everyone, outlining the

¹⁴⁵ Victims were represented by a support worker from VRAS.

¹⁴⁶ In conferences where a second staff member was present, they acted not as co-convenor but in more of a passive supporting role; this occurred when a convenor was inexperienced or in training.

¹⁴⁷ As mentioned earlier, observers included other Anglicare staff members, VRAS personnel or Legal Aid lawyers (who had not previously participated in a conference), for training or preparation purposes.

¹⁴⁸ See appendix 16 for sample agenda.

¹⁴⁹ At the time of the research, all of Anglicare's conference convenors were women.

purpose of the conference — to discuss the impact of the offence/s on everybody present or represented — and briefly summarising the restorative justice theory behind the program¹⁵⁰. It is pointed out that the purpose is not to judge whether the offender is “good or bad”, but simply to talk about the effects of the crime and how these may be resolved. The young person is reminded that they are here voluntarily and can leave at any time, but that they are aware of the possible consequences of doing so¹⁵¹.

The primary aim is reiterated as to empower and strengthen the supports available to the young person. Each participant is then asked to identify who they are and why they are present (in terms of their relationship to the offence). This is followed by the ‘information stage’, whereby the police informant — usually the arresting officer — opens with a summary of the offence/s. The police account includes whether the young person made admissions or gave reasons for their actions, and their general demeanour, for example:

[E] was interviewed ... [he showed] no remorse whatsoever — denied everything — a bit cocky...

[G was] a bit worried... initially denied the offence; then his mum came, then he admitted it... [G] allowed the police to search him... [He was] cooperative.

Frequently, too, the police informant might describe the impact on the wider community, for instance:

Young people driving stolen cars put the public in danger, especially due to their lack of experience — it’s very dangerous... Stolen cars lead to increases in insurance premiums, so it has economic effects on the wider community...
[F’s conference]

This illustrates Dagger’s (1980) degrees of victimisation (in Van Ness, 1993, p.263) described earlier.

¹⁵⁰ See appendix 17 for example of convenor’s introduction.

¹⁵¹ They would have to return to court to be sentenced and would be likely to incur a heavier penalty than if they completed the conference, a youth supervision order (YSO), for instance.

The young person is then asked to give their account of the incident, responding to questions from the convenor which aim to elicit reflection upon the reasons for their behaviour, the consequences of their actions, and the effects on other people around them: *Can you tell us what happened on the night? What were you thinking about at the time? What have you thought about since? Who do you think has been affected?* Responses varyingly reflect regret, remorse, empathy, and a degree of rationalisation, for example:

It wasn't just me; I got blamed for just about all of them. [A¹⁵²]

My family and friends, they were disgusted at what I'd done. [B]

How would I feel if I was in his shoes? I've been thinking about that a lot. Pretty freaked out. [C]

I've realised since I've been working that it's not very nice to turn up to work and not have your tools working. [D]

Next, the victims (or victim representatives, by proxy) are invited to share the impact of the offence and its aftermath on their lives. Recounting what happened from their perspective, they report feelings such as anger, disbelief, disappointment, disgust, fear and emotional distress. The following excerpts exemplify some of these emotions:

Very scared, very shaken, I couldn't speak for about five minutes... I've been scared to go out at night... [C's PV¹⁵³]

...shocked and unable to understand how it could happen. [VRAS representative in E's conference]

...are you coming back to hurt me? [VRAS representative in F's conference]

I went through the whole range of emotions — feeling sick... [G's PV₃]

¹⁵² These letters denote the speaker, A to G being the young people themselves.

¹⁵³ PV denotes the primary victim; PV₂ and PV₃ are used where there is more than one such victim.

Some victims choose not to attend conferences for reasons such as anger, annoyance, trauma, distress and an unwillingness to relive the incident, or indifference. Others do not want to engage with the person they blame for causing them grief, while some were unable due to ill-health or work commitments. Some victims, however, are unexpectedly forgiving, understanding and concerned for the young person's future and well-being. For instance, the father of C's victim tells C:

I don't want to persecute or harm you in any way — I have no wish whatsoever to see you punished.

And,

You've got to help yourself ... the last thing I want to see is you punished.

Two of G's victims (a couple on whose behalf a VRAS representative speaks) felt devastation, shock, disbelief, anger and disappointment, yet express similar benevolence, wanting,

...nothing for themselves, [just] stay in school or study, look after your family, and don't get into trouble again. [VRAS representative]

The offender's supporters each take turn, then, to express their feelings and responses to the crime, and their thoughts about the young person at the time of the offence and subsequent to it. These are elicited in response to prompts from the convenor: *How did you first hear about the incident? What did you think at the time? What has been the hardest thing for you?* This stage, too, involves recollection of the incident and the feelings it provoked at the time. The following excerpts typify the reactions of parents/supports to their young person's offence:

Furious, so angry... I don't understand it at all. [A's aunt]

I thought he had a fairly good upbringing — I was surprised, disappointed, furious, frustrated. [D's father]

Devastated, absolutely devastated — to be woken up at three o'clock in the morning — I cried all the way through the interview ... we've brought him up better than that ... it was such a shock. [E's mother]

It really knocked us over... We haven't told anyone, we were so ashamed. [E's father]

I couldn't believe it... *Why?* [F's father]

It was like being hit by a truck — he's my only son and I love him — it was just unbelievable that day, and for weeks and weeks and months after — you go through so many things, and wonder, have I done something wrong, as a parent? [G's mother]

The young person's legal representative is also given an opportunity to talk about their client's offending and any progress they may have made, as well as how the conferencing program fits into the juvenile justice system more generally. This includes how the case was referred to the conferencing program, an indication of the sentence that might have been otherwise likely, and emphasis on the rehabilitative aim of the Children's Court. Evidently, as a diversionary strategy, the use of conferencing in Victoria aligns with the US practice of diverting young offenders *to* such programs, rather than away from the justice system (Alder & Polk, 1985, p.279; Polk, 1994, p.129). The following key points made by two lawyers are illustrative of the sort of legal context provided:

[F] was heading towards a supervised order... [The lawyer] suggested conferencing ... the magistrate referred [F] even though he considered the charges probably too serious ... In adult court, arson will result in a custodial sentence; in the Children's Court, the emphasis is on fixing things up — so he probably won't get a conviction ... Magistrates see conferencing as a good alternative to probation because the kid gets to hear about the consequences and impact of their actions... [they] admire young people for going through a daunting process; [and it's a way to] avoid "contamination" with other kids in detention ... If a kid continues to offend, he'll end up on a supervisory order or in YTC [Youth Training Centre]; if he stops ... you'll be able to move on.

[C's] been to court ... he pleaded guilty ... there's been no further offending — he's been eligible to be referred to this conferencing program.

Following this information stage, discussion ensues with the convenor drawing together the issues raised, summarising the salient points, and inviting suggestions from the group about how amends might be made, for inclusion in the 'outcome plan'; a break is then called for twenty minutes or so, to share refreshments. During the break the young person and his supporters (including the lawyer if they wish) withdraw to another room for 'private time', to devise a plan to make amends for the crime and address the specific concerns of the group. After the break the plan is put to the group for comments and a process of negotiation of desirable outcomes follows. The convenor finalises the plan by writing the key points on the white board¹⁵⁴ after which everybody is invited to make final comments, such as the following by parents:

It's come out really well, everyone listening... [C's father]

I was cynical but I've been pleasantly surprised — it's been good. [D's father]

We are really sorry for what our son has done ... we hope it never happens again. [E's mother]

I'm really proud of [my son] ... It was a difficult decision for him. [F's mother]

And other participants:

I feel the problem's been resolved ... I'm satisfied. [C's PV]

I am very happy, and pleased to know that [C's father] has imposed a curfew on [C] so he's in at a reasonable hour. [Father of C's PV]

[D] made a mistake but I think he's learnt by meeting me and understanding

¹⁵⁴ These points will be included in the conference report provided to the magistrate prior to sentencing.

how it's affected me... [D's PV]

I think it went good — I really do feel very sorry for the victim and his wife after hearing...[E]

[F's] remorse is clear — it's important for victims to know. Good luck ... you've got a lot going for you. [VRAS representative]

These reflections on the process conclude with the convenor commending the young person on their effort and participation in the conference and acknowledging and thanking each of the participants for their contribution.

5.3.3 The emotional context

As earlier discussed, the free expression of emotion is an important factor in the development of the young person's capacity to see the situation from another's perspective, through "empathic responsiveness" (Katz, 2002, p.32); from this may arise their genuine remorse and resolve that such actions not recur. In the conferences observed, emotions were conveyed predominantly through language. The adjectives in the title of this chapter, for instance, were used to recount feelings and reactions to the crime and its consequences: B's supports were "disgusted" at what he'd done; E's father spoke of feeling "so ashamed"; F's mother described being "really proud of [F], the way he's faced up to what he's done"; and E's mother professed, "we are really so sorry". More overt expression of emotion was noted in only two of the conferences: B's victim's family members were at times visibly upset in relating their experience of the attack and its effects on their brother/son. G's parents were frequently in tears while listening to and describing the ramifications of their son's behaviour. In the interviews with family members, some reported perceiving signs of their young people's stoicism wavering at times during the conference, though these instances were not detected by the researcher. Such reports show how subtle and difficult to discern the nuances of meaning and emotion can be.

An important feature of the conferences observed was the respect shown by

participants in listening to each other and honouring the right of each person to be heard. This was established in the convenor's introduction¹⁵⁵ as one of the conference ground rules, to which the researcher witnessed no challenge. In fact the seven conferences were marked by a tenor of cooperation and goodwill, recalling Braithwaite's "bonds of love and respect throughout" the meeting (1989, p.101), although the element of 'love' was not empirically ascertainable. Surprising generosity and munificence on the part of some victims was observed, as noted above. The most palpable antipathy was of some of those victims who, represented by VRAS, did not attend in person. Notably, the fact they did not directly participate meant that the potential for diminution of their anger and resentment was not realised (O'Connell et al. 1999, p.25). Rather, their reactions persisted in their original, reported form. The significance of the victims' presence or absence and the impact of their sentiments on the young people — particularly the effects of sitting face-to-face — in terms of feeling shame and remorse, are explored in the next chapters.

Clearly, the conference is an opportunity for those affected by a young person's offending to tell their story and express their feelings arising out of the experience. The role of the family — as secondary victims — is manifest in their emotional expression during the meeting. It is important to distinguish, however, between usual familial patterns of exchange — those which may be familiar to young people as part of normal family interactions — and modes of communication which are not typical, since the latter is likely to invoke atypical responses. When the feelings and impressions conveyed are different to those the young person expects to hear, the potential arises for expectations, assumptions and therefore behavioural patterns to be challenged. This point is illustrated in the analysis of conference interactions in chapters six and seven.

5.4 Conclusion

¹⁵⁵ See appendix 17 for example of convenor's introduction.

Certain factors characterised the circumstances and experience of the young people who participated in the study. At the time of their offences, each of the young men were disinterested, dissatisfied and/or unhappy at school. Only three of the seven cited any connection to community supports (in the form of a youth worker or school counsellor). All reported that anger and/or boredom contributed to their offending behaviour. Six of the seven youths had experienced some form of family breakdown or trauma; the other was affected by developmental issues associated with a diagnosis of ADHD. Two of the young people had been homeless. The family circumstances ranged from the violent death of a parent, parental drug use, family conflict, parental ill-health, and family breakdown — resulting in two mothers living overseas. Criminal influences, too, had an impact on the lives and behaviour of at least four of the young people — within family, and amongst peers. While alcohol played a part in two offences, other or serious substance abuse was not an issue for the young people in the study.

As the literature around adolescent risk and protective factors would suggest, plausible links may be drawn between these factors and the offending behaviour of the young people in the study (Cernovich & Giordano, 1987; Laub & Sampson, 1988; Resnick et al. 1993; Resnick et al. 1997). More relevant to this research, however, is the relationship between these factors and the conference process and its outcomes; specifically, the role of the family and the bearing of the group's dynamics on the process. This nexus is explored in the ensuing chapters.

CHAPTER SIX

If you show respect, you'll get it back...

6.0 Introduction

This chapter compares the development of outcome plans in two of the conferences, to explore the implications arising from the size, dynamics and distinguishing aspects of each group. The conferences chosen for comparison are illustrative only insofar as the uniqueness of each young man's experience and circumstances. Several features differentiate the conferences, including the nature and degree of group interaction, the expression of emotion, and the young person's level of participation. The most significant disparity, however, emerges in the management of the process and its effect on the outcomes.

The second part of the chapter examines the dimensions of three significant and recurrent motifs: power and agency; context and constraint; and the varying construal of success. Examples are drawn from the seven conferences. An observation made by B's arresting officer spawned this chapter's title: "If you show respect, you'll get it back". This advice alludes to the fundamental nature of the conference as a process of human interaction, inherently subjective and personal, involving relationships between individuals which hinge on the nature of that interaction. Issues of respect and reciprocity thus emerge as key considerations.

6.1 Comparing the outcome plans of B and G

As noted earlier, the number of participants in each conference varied from seven to thirteen, plus at least one observer (see table 5.2). Such difference in group size raises questions about the implications for the young person and, consequently, the outcomes of the conference. These are brought to light on examination of two of the conferences — those of B and G — that happened to be the two largest groups, of fifteen and fourteen respectively. B developed a seemingly simple outcome plan, while G's was the most detailed of the seven;

the process within which each evolved is explored here, followed by analysis of the issues arising. First, consider B's conference: in a small room, in the presence of fourteen¹⁵⁶ adults focused intently on his words and actions, a fourteen-year-old boy answered questions about personal issues and spoke of his feelings of anger and thoughts at the time of his offence; he listened to detailed and emotional accounts of the effects of his violent attack on a man (aged 24 at the time) not previously known to him.

While the victim himself was reticent and hesitant in his account, it emerged that, as well as undergoing microsurgery to repair his physical injuries, he had suffered a debilitating loss of confidence for over a year since the assault¹⁵⁷, having been diagnosed with depression and post-traumatic stress disorder. He had been unable to work or to go anywhere alone. The victim's mother, sister and brother, in turn, expressed their distress, anger, bewilderment, grief and helplessness over the traumatic effects of B's actions on their family, which had also caused fear and anxiety among friends and the local community. As the police officer related, rumour and reports of the incident meant people were afraid to travel by train, especially at night. The VRAS representative, supporting the victim and his family, offered similar insights into the wider repercussions of the offence and its impact on the community. B then listened quietly while his 'aunt' recounted how he had come to stay with her after the incident, and of her subsequent disgust and shock after he told her what he had done. His housemate, too, told of being shocked when she learned of the assault since, to her, "he doesn't come across as like that — he's just a boy, a normal kid".

A persistent theme emerged in the conference: that of the adults in the room speaking about B in the third person while he listened. B's lawyer, for instance, explained how he had come to represent B at the Children's Court and that since B had not reoffended, the lawyer did not think probation was necessary as his extended 'family' were looking after him. The victim's brother retorted at this point, asking how he would know whether B needed probation

¹⁵⁶ The fourteen adults comprised ten participants in the conference and four observers, including the researcher; the others were an Anglicare convenor-in-training, and two extra VRAS staff for training and support purposes.

¹⁵⁷ The offence had occurred thirteen months prior to the conference.

or not when he didn't know B (to which the lawyer explained that probation is required if the offender is not at school or working). The victim's family also asked about the possible judicial outcome of the conference (apparently not wishing for too light a penalty), and the voluntariness of B's participation, presumably to gauge the genuineness of his remorse. The convenor spoke here about the process by which it was suggested B might want to take part in the conferencing program, admitting that some pressure may have been felt by B to participate, despite it being ostensibly a voluntary process.

Along with this sort of dialogue, commentary was offered as to B's needs. For instance, the victim's family (at the conference convenor's invitation) proposed that counselling and anger management be included in B's outcome plan. The police officer, too, proffered a knowing warning:

the test will be if another trigger incident occurs ... [B's] got to be his own judge ... maybe it's a one-off, maybe he's growing up, won't know until time passes ... I want him to see how stupid he was and not to do it again ... Won't know what'll happen if someone gives him the shits in the future, how he'll react.

The women supporting B responded by affirming,

If he follows the path he's on now, he'll be alright.

And,

If he keeps this job — he likes it — he'll be alright.

The police officer then made a further point — instructive, yet seeming to offer a sense of hope and encouragement — which sounded almost fatherly:

... [B] won't bring this up himself, because he probably hasn't thought about it himself — but it's self-esteem. Low self-esteem comes from being not wanted — self esteem is the only way to have self-discipline — if you show respect, you'll get it back (that includes respect for yourself).

A twenty minute break ensued during which B with his lawyer and two

supports, in private discussion, developed a plan to make amends to the victim and address the issues relating to B's offending behaviour. On resuming the meeting, as B read out his plan (see figure 6.1 below), the convenor noted each point on a white board for the group's feedback and agreement. The convenor explained that this would be written up in a report for the magistrate, who would ratify the plan as part of a court order. After three months the convenor would inform the magistrate of B's compliance or otherwise¹⁵⁸. Since the plan was accepted without amendment by the group, B proceeded to apologise to the family then hand to the victim a written apology (prepared during the break). The victim read this to himself, during a moment of respectful silence in the room.

Figure 6.1 B's outcome plan¹⁵⁹

- Outcome Plan:

 1. Apology — verbal and written [to victim & his family]
 2. To attend session to learn about anger triggers.
 3. To stick at my job and what I'm doing now.
 4. I agree not to drink alcohol unless I'm supervised.
 5. Stay out of fights.

Each person was then invited to make a final comment about what they felt the conference had achieved and the most important thing to come out of it for them. B's reply was twofold, offering assurance as well as renouncing the past:

Those people aren't my friends anymore ... Coming in has made me realise what I did was wrong and how it has affected not just [the victim] but a lot of other people as well.

His use of the perfect tense — “it has affected” — implies an unqualified acknowledgment of the far-reaching consequences of his actions, suggesting

¹⁵⁸ Non-compliance would constitute a breach of the order, requiring B to return to court for further sanction.

¹⁵⁹ This is the most succinct outcome plan resulting from the conferences observed. Each agreement reflected the particular issues arising from the conference, the concerns of the group and the circumstances of the offence.

B's acceptance of his responsibility. He seems, too, to have distanced himself, in his own mind, from his behaviour of a year earlier: "what I did was wrong", putting it firmly in the past tense. Certainly a shift in his confidence and self-awareness, since the offence, was discernible in an earlier comment in the conference, also differentiating between 'now' and 'then':

Now I know I can ask for help ... there is support out there — back then I knew nothing.

Analysis of B's outcome plan reveals two different types of undertaking. The first two points — apology and attending an anger management session — entail finite and measurable activities; B would either complete these tasks or not, within the three month period. The second type of commitment, however, involves an obligation which is ongoing and therefore indeterminate. Consider, for instance, B's promise: "to stick at my job and what I'm doing now". Rather than setting himself a discrete assignment, achievable within a clear time frame, he has made a pledge to keep out of trouble, as it were, to not repeat his past mistakes. Similarly his agreement to drink alcohol only under supervision and to "stay out of fights", are an acknowledgment that these factors contributed to his offence and an expression of his wish to avoid such actions in future. By thus establishing a behavioural standard for himself without a specified time limit, B is setting ambitious goals. Yet, despite the open-ended nature of these undertakings, the fact that he has drafted them himself — in effect, given his word — suggests a strong potential for their achievement.

From an observer's perspective, certain aspects of the conference process seemed to predict B's successful completion of his plan. For example, the mutual respect inherent in the group dynamic — particularly where it represented a deviation from usual forms of interaction, such as between B and the police officer — imparted a sense of the group's belief in B's capacity for change and self-awareness. Consider the police officer's gentle admonition that B has "got to be his own judge", and that "if you show respect, you'll get it back"; implicit is that B is capable of these things, a message confirmed by the quiet yet constant support — both physical and moral — of B's 'aunt' and

housemate. That they were prepared to participate in the conference process, with apparently selfless motives, implied domestic relationships based on trust, care and concern yet with clear boundaries, conducive to rule-abidance. And the sense of closure which the conference afforded its participants — the feeling that they could put behind them the incident which had first brought them together — seemed tangible, embodied most clearly in a final encounter between ‘victim’ and ‘offender’, described below. Overall, the setting was marked by acknowledgement of, attention to, and respect for the importance of each person’s contribution. These features distinguished the process as an uncommon and compelling experience, likely to leave a lasting impression on its participants.

There was perhaps a surprising theme to emerge from the conference: a sense of B’s empowerment by the process. By actively participating in the decision-making and devising a concrete way of dealing with issues that he had brought to bear, B was granted the prospect of agency — of meaningful engagement in an adult process of resolution. Daly similarly observed teenagers ‘holding their own’ in a roomful of adults (2001, p.23). Such an opportunity is rarely afforded young people, particularly within a formal judicial milieu (Barton, 2000, p.1); nonetheless B’s active part in the process was manifest. The outcome plan itself represented, in his own voice,¹⁶⁰ B’s pledge to strive towards realistic goals that would fulfil three obligations: to address the factors surrounding his offence; to express his remorse to the victim and the victim’s family; and to make assurances that the behaviour would not be repeated. It appeared that his genuine effort was acknowledged when, after the conference had been formally closed by the convenor, the victim — call him ‘V’ — stood and walked across the circle to shake B’s hand. To an observer, this closing encounter was indeed a transformative moment, signifying a dramatic shift in the power differential that earlier existed as a result of B’s crime against V. Such a significant physical outcome was not observed by the researcher in any other conference.

¹⁶⁰ Note, for instance, the use of the first person in points 3 and 4 of B’s outcome plan, figure 6.1.

G's conference was selected for comparison with B's in light of the different ways in which the two outcome plans were developed and the context within which each process transpired. While both meetings were attended by a large number of people, differences were manifest in the level of interaction between the young person and the other participants, the degree of complexity of the plan and its demands on the young offender, as well as the role played by the convenor in facilitating the process and empowering the individuals involved. These and related issues are explored below. First, however, to reflect on G's conference: a sixteen year old boy — with ADHD and immature by his mother's reckoning¹⁶¹ — is seated, with his parents on either side of him, in a circle of ten other adults. Outside the circle, diagonally opposite him, sits the researcher as observer; altogether fourteen people are in the room.

The conference opened with the police account of the incident, which caused over \$300,000 fire damage to three new townhouses being built. G subsequently gave his version of what had happened, what he had been thinking about at the time and since, and who had been affected by his actions, after which he listened quietly, arms crossed and legs thrust forward, while the first couple — owners of one of the properties under construction — related their emotional reactions to the incident. A victim representative then detailed the impact on a second couple who owned one of the houses: because of their financial losses they were now renting a two bedroom house between six people, the parents having to share a single bed. G's mother was in tears at this point. The owner of the construction company related his disappointment and frustration and detailed his economic loss, before a ten minute break offered some respite.

Two firefighters' accounts ensued — one of the actual response at the scene, and the damage and anxiety the fire caused (Fireman 1); the other of G's engagement with the Juvenile Fire Awareness and Intervention Program (JFAIP), learning about the dangers of fire and the role of emergency personnel (Fireman 2). G's mother, still very emotional, was then asked how she first heard about what had happened and her reactions then and since.

¹⁶¹ Information received in telephone conversation with G's mother, 3/9/03.

After her story G's father, too, broke down in tears describing his experience of G's offence, the build-up to it, and what had happened since. G's lawyer's explanation followed, of how the conference process fits into the children's court system, during which G's body language remained defensive — arms crossed, legs outstretched and crossed, head lowered, and eye contact shifting between the floor, the faces in the group and those of the speaker. During the break it was commented to the researcher, by the victims' representative, that G had appeared "really cocky-looking outside" then once the conference was convened he had "shrunk into himself". Though a subjective assessment, this perception accorded with the researcher's own observations of G's demeanour.

As in B's conference, there seemed to emerge a pattern of the adults talking about G and what he should do, rather than G being engaged in the group discussion, as the following dialogue illustrates. At the convenor's invitation, his lawyer summed up G's awareness of how many people he had affected and invited the victims to suggest possible amends. The construction company proprietor, G's parents, the first victim and her husband, the representative of the other victims, and the two firemen each contributed to an exchange of ideas and possibilities, during which G was silent. G's mother finally asked,

What else do you think [G]? What do you think Dad and I have been through?

G did not reply. At the convenor's prompting, "What are your thoughts [G]?" he responded: "Spot on". To the convenor's next question, whether there were any more ideas for the outcome plan, the first victim suggested to G:

Perhaps talk to other young offenders about how horrible this has been for you...

G remained silent. Again the convenor asked if there was anything he would like to add, to which G gestured 'no'. Pressed, however, by the second victim's request,

I'd like [G] to try and verbalise how it feels at this point,

G answered, almost perfunctorily at first:

I feel terrible about what I've done, how I've affected everyone...

Then more expressly —

...especially that baby — that really shocked me.

G made direct eye contact at this point (with the couple who were unable to bring their baby home to their new house for their first Christmas together), giving the impression of sincere recognition of the harm he had caused. Immediately afterwards he looked down at the floor, head down, hinting at a sense of shame; equally, though, this may have signalled detachment and withdrawal from the group interaction at that point, resuming his earlier reticence. The extent to which G's difficulties — with attention, concentration and emotional maturity — impinged on his level of engagement with the group discussion was indecipherable; none of these issues was conspicuous in the course of the meeting. A feature which did have a more significant bearing on the conference and its outcomes, however, was the convenor's facilitation of the process, as discussed below.

After the announcement of a second break, G and his parents and lawyer withdrew to a private room to formulate a plan. On returning to the meeting, G presented the plan, below.

Figure 6.2 G's outcome plan

<p><u>Outcome Plan:</u></p> <ol style="list-style-type: none">1. Undertake 12 days of weekend work for [construction company] over next few months, commencing after school holidays in the first two weeks of [month].2. To write to [fireman 2] at JFAIP offering time and services to speak on video about his personal experience, to be shown to other juveniles participating in the program.3. Participate in discussion with (voluntary) adult offenders as arranged by his barrister — [lawyer] to make enquiries (only if possible).4. To purchase with first pay packet (when he starts working) a present for [victims'] child as a demonstration of his preparedness to address his behaviour.
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Apparently not satisfied, however, the group continued its discussion, resulting in further commitments:

Figure 6.3 G's outcome plan addenda

<p><u>Outcome Plan:</u></p> <ol style="list-style-type: none">5. Letter of apology to victims who didn't attend.6. Face to face apology to elderly neighbours.7. G to be available to a newspaper journalist for an interview about his experience.

After G read out his first point, the builder replied:

...give me a call, [I'll] give him some chores.

To G's second point, Fireman 2 responded:

It's not currently part of the program – but to get on video ... will be fantastic for other kids.

Following points 3 and 4, the victim representative suggested a letter of apology; G agreed, saying, “I still want to say I’m sorry”. G’s mother expressed concern about some elderly neighbours, proposing:

[G] could pop around and apologise.

G agreed, adding points 5 and 6 to his list. Talk ensued about G’s school and work prospects, emphasising the importance of doing *something*. An interview with a journalist was mooted, and an apology to the fire brigade. G suggested he write

... a letter to the individual officer who went in.

This was rejected:

we’d rather see action on your part ... write a letter about something positive...
[i.e. work or an apprenticeship]. [Fireman 1]

The convenor then raised again the suggestion of an interview, to which G agreed. Following the addition of this seventh item, the discussion continued with a further suggestion about his apology to victims:

... perhaps [G] could outline his resolutions and what’s been happening in his life since it happened? [Victim representative]

This point was not resolved, however. Instead, the victim whose house was burnt down summed up with these words to G:

...the big thing coming out of today has been the impact of your actions — you’re on the edge of teenage-hood, getting your licence soon ... take this [the conference experience] into the future ... Good luck.

Whether the victim sensed that enough had been said about the making of

amends, or whether he was simply keen to bring the discussion to a close, he shifted the tone of the preceding conversation: though admonishing, his advice was direct, forward-looking and positive; until then the group had been talking mainly about G and what more he could do, rather than encouraging him towards realistic commitments.

These remarks prompted the convenor's invitation for everyone to share their concluding thoughts. Overwhelmingly, the participants' reflections were marked by optimism and confidence, applauding the process and G's participation in it:

It went really well — [it] wasn't just damning [but] supportive as well. ... it wouldn't've been easy. [Police officer]

... you were all supportive of him. [G's father]

G himself spoke, somewhat obscurely, of,

good things and opportunities in the future in putting this behind me and moving on with my life.

Others' remarks followed, including:

Everyone's been so respectful and generous — thank you so much. [G's mother]

In nearly eight years of law this is the most worthwhile afternoon I've had. [G's lawyer]

....excellent and worthwhile for everyone.... [G, you're] lucky to have supportive parents... [PV#2]

The enthusiasm was tempered only by the sober insight of the fireman who had attended the scene:

This is only the start of the process I imagine — the hard work is ahead of [G].

The proprietor of the construction company had the final word:

I've always pushed the line about having a plan for your life — during the twelve days I have you I'll be pushing you [G]!!

He thus cemented the tone of the session as patronising and paternalistic towards G, in that the need for G to take responsibility for what he had done was actually countered by the group's imposition of its demands on him. The proprietor's earlier remark — we'll "give him some chores" — exemplifies the nature of the exchange. The authoritarian gist of these words denotes a manifest power differential in the victim's favour. The word 'chores' — inferring tedious and routine household tasks — has the effect of trivialising G's offer to 'work for' the building company, devaluing his effort to make amends. In the face of G's apparent lack of engagement or agency, the victims' need for vindication emerged as the dominant concern of the group, a focus which was neither conducive to nor supportive of either behavioural change or G's compliance with his agreements. To the researcher it appeared that G's attitude conveyed apathy and disenfranchisement, through the appropriation of his role in the process by more powerful voices. Testament to this perception was the perfunctory nature of his responses, such as, when asked to add his thoughts to a lengthy discussion about making amends: "Spot on".

Clearly, G's plan is longer and more complicated than B's, yet many more distinguishing aspects emerge on closer examination. The intention behind each undertaking is less transparent: for instance, the twelve days of weekend work is presumably a gesture of G's willingness to make amends by working without payment, while also addressing his father's concern about redress. Yet no explanation is given as to why this time period was chosen, what it relates to, or the specific purpose of the commitment. The language used is less suggestive of the young person's own voice than that of B's plan; consider, for example, the wording of point two:

offering time and services to speak on video about his personal experience, to be shown to other juveniles participating in the program.

Besides the use of the third person, indicating a spokesman, the phrasing is difficult to reconcile with the voice of a teenager of low to average intelligence; “other juveniles”, for example, does not resonate with the self-reference of an adolescent.

Moreover, in reading out point four, G actually stumbled over the words, “a demonstration of preparedness”, which signalled to the observer that the expression was not his own. It seemed to suggest that one or both of his parents may have hijacked an idea of G’s (assuming it was his own), couching it in terms that seemed more appropriate to the needs and expectations of the group. Inevitably, subtle manipulation of G’s intentions in such a way would militate against his sense of ownership of the outcome plan, and thereby lessen the likelihood of its fulfilment. The inclusion of point three, the “discussion with adult offenders”, appears irrelevant to G’s circumstances, seeming to satisfy an adult wish to deter future misbehaviour, rather than G’s need to make amends and to address the factors around his offending. Issues such as his associating with peers, for instance, or engaging with school or community education or training programs, were not broached in the plan, despite being clearly linked to his offending behaviour.

During the conference G’s mother emphasised the need to make sure G’s commitments were reasonable, realistic and meaningful, twice saying:

It’s got to be appropriate to what happened...

Her emphasis on acknowledging “who was affected”, “how it felt, how he’s affected other people”, and the “enormous effect it’s had on [the victims’] life”, was echoed by G’s father:

...what’s he going to come and do? ... You probably don’t want to see him, so what can he do to try and redress your situation?

The concerns of G’s parents, however, seem not to have been resolved. In terms of making direct amends to the victims, or of G developing true

awareness of the consequences of lighting the fire, the terms of point two appear rather to function as a shaming mechanism: not only is G required to write a letter offering his “time and services”, he is obliged presumably to be either interviewed on film or speak directly to a camera, about what he did and what he learnt from it. The assumption is that G has indeed learnt from his mistake and that he is able to articulate his lesson.

This video record will ensure that “other juveniles” will apply G’s experience to their own, and be deterred from further offending. The video-viewing process is vicarious rather than interactive, however; G is afforded no opportunity for empathetic or redemptive feedback from his audience. Nor is there a cut-off date — the video record persists long after the putative conclusion of G’s experience arising from his offence. Clearly this task exceeds G’s capacity to complete it within three months, and his obligation to make amends to the victims. It is therefore neither realistic nor reasonable. With its indeterminacy and shaming effect, moreover, it is antithetical to the reintegrative aim of the conferencing process.

Similarly open-ended and potentially stigmatising is the undertaking “to be available” for a newspaper interview. The way this was suggested underlines the superiority alluded to above:

I get journalists ringing up wanting to interview young people – maybe I could tell them [G’s] available to speak about what he did? [Fireman 2].

G’s availability is not requested but presumed. Again, such an indefinite commitment is disproportionate to the obligation arising from his offence. The task does not address G’s offending or related factors such as his boredom, disconnectedness from school, or peer associations. It seemed negligent of the convenor, and inconsistent with her role, to reiterate this suggestion to G, giving him little option but to agree. A more attentive and considered response might have shifted towards a more feasible, constructive and appropriate proposition, embodying relevant concerns such as G’s education or work situation. Alternatively, a brief amendment could have accommodated further demands, as the following example illustrates.

Point four qualifies the purchase of a gift with the condition that it is with G's 'first pay packet'; the assumption is that he will begin work in the near future. By including G's intention to look for a job as soon as possible, the convenor could have made this pledge practical and relevant. Assuming the plan is to be completed within three months, the insertion of a promise to seek out work or attend a training program within that period would make steps towards his 'first pay packet', and actively 'address his behaviour'. This would enable him to fulfil his promise of a gift for the baby, as well as reduce the likelihood of his reoffending through boredom or inactivity. As his mother indicated further on:

Holidays are coming up ... after that, that's it — work or back to school or something — no more sitting at home... [G affirms by nodding].

Again the convenor missed the opportunity to formalise this key issue as part of the outcome plan. By not specifying job-seeking as a discrete undertaking, the compulsion for G to take this first step is diminished; in fact it gives G an excuse to not fulfil this part of his agreement.

The outcome plan did comprise some workable aspects, nonetheless. Two examples of clear, meaningful and achievable tasks that arose from the discussion are points five and six, apologies to other victims of the fire. G himself suggested a written apology to the "other owners who didn't participate in the conference", demonstrating his willingness to actively contribute when given an opportunity to do so. Notably, it is this element of his outcome plan which represents the most simple, relevant and doable of the commitments, and therefore the most likely to be achieved.

Thus, agency in the process afforded G greater capacity for accomplishment. In contrast, the "face-to-face apology to elderly neighbours", while agreed to by G, is nonetheless tinged with his mother's influence. The suggestion that G could "pop around and apologise", in distinctly her terms, appears to make light of a serious obligation. Also, it does not specifically address the needs of those present, and thus exceeds the group's demands. Some of the difficulties in facilitating a conference surface here. Clearly, balancing the conflicting

ideas and interests of a disparate group requires skill and experience, an issue considered below.

The role of G's supports in the conference, his mother and father, had a significant influence on the process. To an observer, the bearing of G's parents was marked by certain characteristics including the display of emotion, their tears acknowledged at one point by G's mother:

This is months of build up...

Also perceived was the need for their son to behave in a way fitting the group's expectations. Their urging of G verged on the insistent, while their empathy appeared weighted in the victims' favour. For example, it was important to his parents that G "get the message", in his mother's words:

I want [G] to learn from this but I don't want him to walk away thinking 'that was easy'.

Their expectations seemed to stem not only from their experience of G's offence and the emotional distress this caused them, but also from their latent sense of shame at their son's actions. Evidently, their feelings have a history connected to G's past conduct and patterns of behaviour. G's father suggests thwarted hopes:

Just the disappointment... the fact that it was father's day — it didn't make it significantly worse but it made it worse ... [Gs father]

G's mother's remark — "All kids should have to do it" — seems to embody a persistent theme in the response of both parents: dominating G's needs with their own; insisting on his accountability, yet seeming unable to allow G to determine his own outcomes. Rather than guiding him towards a realistic and achievable set of targets, G's parents appeared to commandeer the process for their own purposes and to impose their own ideas. Possibly they were swept up in the emotional experience. Perhaps they were signalling their own need

for support in dealing with their son's behaviour. Nevertheless, the process may well have predicted its outcome, as Maxwell and Morris (1994) warn:

A successful [conference] needs the various parties involved... to be well prepared for the meeting ... with information on ... possible outcomes (p.23).

The convenor's preparation with the family should have clearly identified the issues relating to G's offending, prior to the conference, to ensure they were specifically addressed. This role, in strengthening and empowering the family to deal with the young person's behaviour, requires skill and training. Without these, a convenor may jeopardise conference success:

... if families are denied or given limited knowledge about possible outcomes then they are in effect denied or given limited empowerment (Maxwell & Morris, 1994, p.23).

The empowerment of G's parents is twofold: facilitating their capacity to engage in the process — to have a voice in the proceedings and the shape of its outcomes; and allowing them a real and positive influence on their son's behaviour by ensuring a coherent and workable plan to monitor and maintain. An unrealistic plan undermines this capacity.

6.1.1 Key differences

In terms of the 'success' of the two conferences above, many divergent aspects emerged. B's personal situation, on the face of it, did not connote the strong family support that G's parents provided, yet his social supports functioned effectively as a source of moral encouragement and behavioural expectations. G's mother and father were more vocal and emotional in expressing their support, yet this did not necessarily weigh in G's favour. Despite the serious and personal injury caused by B's offence, the balance of power was more noticeably equitable in his conference, as was a focus on the present which gave rise to concrete and practical outcomes. In contrast, G's conference seemed to be dominated by the group's desire for G to make up for what he had done with a range of less realistic tasks, disproportionate to his offence.

While B's plan centred squarely on the issues linked to his offending, G's agreements related less to the reasons why he had committed the offence and more, it seemed, to appeasing the mood of the group. Consequently, the sense of each young person's agency in the process, and hence their ownership of its outcomes, was starkly different.

The language of each outcome plan was telling: in his commitments B's own voice was clear, while G's promises were coloured by the expectations and intentions of others in the group. The practicality and feasibility of each plan's content varied, too: B's comprised concise, relevant and achievable goals; whereas G's list of tasks bound him to obligations that lacked particular relevance or a specified time frame, making their accomplishment less likely. 'Success', then, was most apparent in B's conference, which concluded with a physical symbol of accord and restoration — the handshake between victim and offender. Moreover, at the end of three months, B had fulfilled the obligations of his outcome plan. By contrast, three months after his conference, G had not completed his set tasks and had committed another offence.

The outcome plans generated in the other conferences consisted of a range of undertakings, all completed¹⁶². These included: attendance at vocational programs; maintaining employment or education; not associating with co-offenders; replacing stolen items; sending a letter of explanation to victims; financial restitution; and assurances to abide by rules. While all the plans included some form of apology and/or pledge to not repeat the offending behaviour, some comprised more individual and specific commitments, such as A's promise to replace a victim's car badge. While the conferences followed a similar format, these variations reflect their unique characteristics according to the circumstances of each offence and the individuals affected, as well as the group dynamics and facilitation of the process. No single feature conveys the meaning of the conference and its significance for the participants. Understanding of the process arises out of analysis of its various components and how they interrelate as a whole.

¹⁶² According to Anglicare records (team leader in email 20/6/03).

6.2 Emergent themes: power, context, success

From the discussion above, underlying and intersecting themes emerge: the use, transfer and mediation of power, and attendant issues of agency and ownership¹⁶³; the context and constraints of the conferencing program, including the significance of the convenor's role; and how positive conference outcomes may be defined and determined. These issues are explored below.

6.2.1 Power and agency

Power entails a group or individual getting its own way in a social interaction or decision-making process (Haralambos, 1986, p.24, p.98; Seymour-Smith, 1993, p.230). Power — and its dynamic twin, agency — shapes human relations, often in unseen ways. One way to discover its ramifications in social transactions is to plot its movements within an exchange, such as a group conference. The following diagrams represent the power relations manifest in a set of interactions: how power was configured, shared and transferred between participants in the conferences observed.

Each portrayal is an amalgam, an exemplar, not faithfully rendering any particular conference. The diagrams correspond to power relations manifest at four phases of the interactional sequence: the offence itself (6.4); the beginning of the conference (6.5); during the meeting (6.6); and the closing stages of the process (6.7). The participants — active and passive — in each exchange are highlighted. The different phases illustrate the inconstancy and relativity of power and the capacity to exert it.

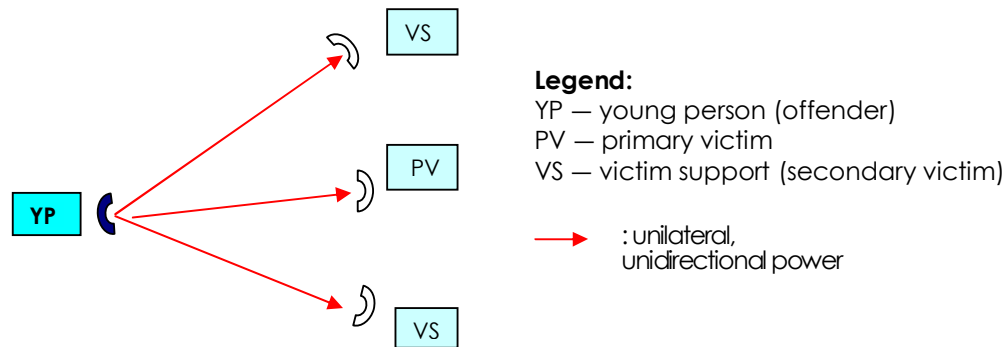
'Power' at the time of the offence

Figure 6.4, below, depicts power relations brought about by a young person's offence: the victim is disempowered by having their rights or liberty violated. In the study this ranged from theft and wilful damage of property (A, C, D, F

¹⁶³ 'Ownership' is used here to mean acknowledging authorship of, and assuming responsibility for.

and G), to the threat of violence (C), and actual physical attack (B and E). Common to each interaction is an underlying power dynamic: the intrusion on one's dominion by the actions of another.

Figure 6.4 Configuration of power at the time of the offence:



'Power' at the start of the conference

Figure 6.5 depicts the configuration of power between participants when the conferencing process is initiated. There is manifest power exerted over the young person by the police officer who made the initial arrest and thus began the legal process, as well as by the convenor, who has been authorised by the children's court to engage the young person in the conferencing process, and with whom control over the process and its final outcome resides (in terms of reporting to the sentencing magistrate). Supportive power is directed towards the young person by their legal representative, whose role is to protect their legal and procedural rights, and by their supportive others; their significance is manifest:

What was the best thing about [doing the conference]?

Having my Nan there to calm me down. [A, interview]

It was important for [A] to know he had someone. It's not a hell of a lot of support he's got. [A's grandmother, interview]

Figure 6.5 Power relations at the start of the conference:

behaviour. A's allusion highlights the importance of the convenor's role as mediator, shown clearly in figure 6.5 above:

...if [the convenor] wasn't there and it was just me, my lawyer and the victims,
I reckon it would've got a bit ugly. [A, interview]

'Power' during the conference

Figure 6.6 shows the diametric shift in the power differential shown in figure 6.4, as the victims (primary and secondary) assert power through giving voice to the experience of victimisation. An excerpt from C's conference is illustrative:

[CC to PV]: What's been the hardest thing for you?

[PV]: Probably to sit here and face him [C] — I've been very nervous. But we've gotta get to the bottom of this.

After relating his story and hearing from C, the victim implies that his fear has been dispelled and a sense of power restored:

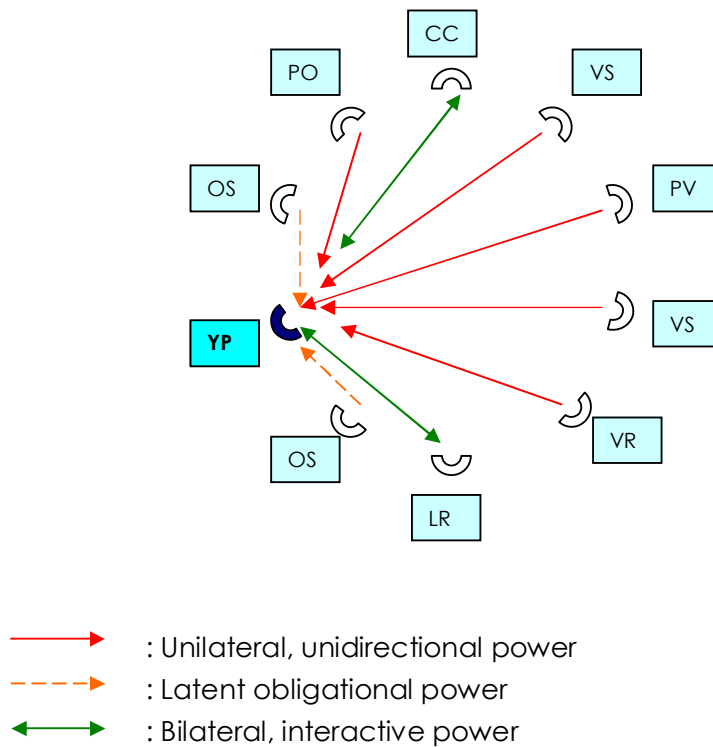
I feel the problem's been resolved — it's been good, I'm satisfied. [C's victim]

D's victim more actively asserts a position of ascendancy by warning D:

...you don't want to do it to the wrong person.

The authority of the police informant, manifest in the initial summary of the incident, is soon surpassed by the focus on the other participants' accounts of the offence's impact. The links between the young person and the convenor, and the young person and his lawyer, represent alliances based on the professionals' obligation to protect the rights of the young person, in exchange for his undertaking to participate in the conference and demonstrate accountability. The designation of the young person as 'client' points to the bilateral nature of these power relations (see Anglicare, 2002, p.23, 30).

Figure 6.6 Power dynamics during the conference:



The dynamic between the young person and their supports indicates a shift from the purely supportive power directed towards the young person at first, to a more manifest sense of expectation to take responsibility for the consequences of their actions. This power dynamic relates to the experience of shame and discomfort on the part of the offender's supports. It also reflects established patterns of moralisation and normative communication. For example:

Hopefully he'll be more sociable, less anti-social, more sociable with the community — He's got a commitment with his car, he's finishing his apprenticeship. [E's father]

Work'll help a lot! He'll be too damned tired to do anything! [F's mother]

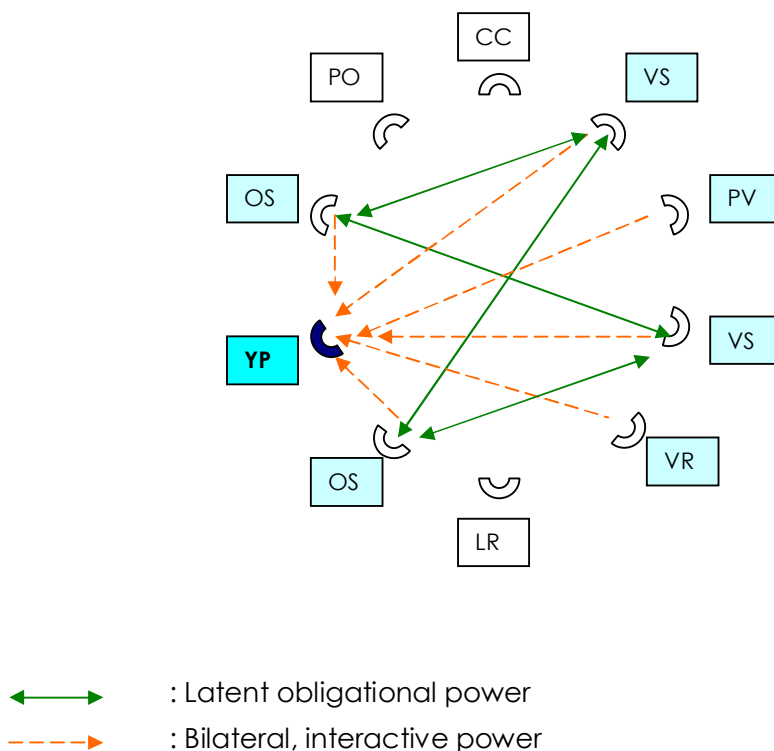
These comments exemplify the hopes and expectations expressed by parents regarding their sons' behaviour, suggesting, moreover, a sense of looking to the future and wishing to put the whole offending incident behind them. Such

aspirations, when voiced publicly, effect a subtle urging on the young people, perhaps even absolving the parents' of their own disappointment. This is depicted as latent obligational power in the diagram above. Understandably, experiencing these dynamics, A felt “a bit pointed out” (interview).

‘Power’ following the conference

Figure 6.7 depicts the immediate result of the conference in terms of its effects on power relations, as observed in six of the conferences.

Figure 6.7 Power relations at the close of the conference:



On the young person there has emerged a weight of expectation about his future behaviour and capacity for change, based on the development of the outcome plan and the agreements it contains. The power differential between victim and offender has retained the shape assumed during the conference process, although the degree of difference has been reduced through the agency and empowerment of the young person in the development of the

outcome plan. Through this consensual, cooperative process the making of amends is actualised, along with the young person's acceptance of responsibility and a subsequent sense of closure afforded to the participants (as E's mother implies in his conference). Thus the seeds of reintegration are sown, symbolised in the equalising of relations between the supporters of both victim and offender, through their empathic exchange. Notably, the final dynamics hinge on interactions between the individuals affected by the offence, rather than the professional players in the arena (the police officer, convenor and lawyer).

G's conference, however, tells a different story. As mentioned earlier, reintegration entails "reciprocity of action and responsibility" (Salomone, 2003, p.7). On the young person's part, the conference requires action — in making amends — and responsibility in addressing their behaviour. The concomitant community obligation (Braithwaite, 1989, p.100) behoves the conference participants to provide "opportunities for responsible community participation" (Salomone, 2003, p.7). Since agency implies social freedom (Bilton et al. 1996, p.13), this means granting the young person a degree of autonomy and affording them respect, recalling the maxim, 'if you show respect, you'll get it back'¹⁶⁵. Failure to meet this reciprocal obligation undermines the prospect of reintegration. G's agency, for instance, was constrained by the apparent unwillingness of his 'community' to allow him self-determination and offer genuine participative opportunities. In contrast, B's capacity for active involvement was verified in his outcome plan, which encapsulated succinctly his expressed intentions. By allowing B to set his own course, as it were, his 'community' reciprocated his action and responsibility and thus paved the way towards his reintegration.

Participants' varying capacity to exert influence in the decision-making, despite resistance (Weber, 1948, in Haralambos, 1986, p.98; also Seymour-Smith, 1993, p.230), highlights the importance of the convenor's role in facilitating the process. For young people and their supports, taking purposeful action (Bilton et al. 1996, p.13), with a sense of entitlement to do

¹⁶⁵ These words were said by the arresting police officer in B's conference. They give this chapter its title.

so, emerges as key to the development of consensual and ultimately successful outcomes. When their power is constrained by the relative positions, status and motives of others in the group, the convenor's responsibility becomes most acute. Critical skills are required to mediate, balance these interests and manage the power differential equitably.

The exercise of power and agency thus emerge as decisive elements of the process. The reciprocity of influence, the interactional ebb and flow, shapes the experience of the conference for the young people and their supports. More significantly, however, it reflects the degree of their empowerment and participation in the decision-making. This is what ultimately determines the success of the conference and its outcomes.

6.2.2 Context and constraint

Clearly, factors militating against the realisation of empowerment and agency for young people and their families have implications for potential reintegration. These include the structural, legal and normative constraints operating within and around the conferencing program, and aspects of the conference itself. The family context, for example, manifests in the physical and emotional support of the young person by their significant others; 'A' confirms its importance:

I prob'ly would've done it without them but it wouldn't've went too well — wouldn't've went well at all. [A's interview]

The nature of this support is shaped by hidden, tacit elements of their relationships, the communication of moral beliefs and behavioural expectations, which together serve as normative constraints on a young person's behaviour in the conference.

The notion of program context impinging on conference processes surfaced in earlier discussion of SAJJ findings. Finding that only half the offenders interviewed felt affected by the victims' story, and nearly half were either not

sorry or less sorry for the victim, Daly identified offenders' limited interests in repairing the harm as constraining "restorativeness" (2001, p.22; 2002, p.5). This is not corroborated by the Victorian experience however: in pre-sentence conferencing the prospect of a lesser penalty¹⁶⁶ is an incentive for active participation. Since the conference report influences the magistrate's decision, it is clearly in offenders' interests to demonstrate remorse and resolve not to reoffend. While the risk of young people feeling pressured to participate must therefore be considered, as acknowledged by B's convenor, this study revealed no evidence of coercion. Each of the young people interviewed insisted it was their decision to participate in the conference, though some were guided by family members:

I just said it'd be a good thing ... and he decided he would go through with it.
[A's grandmother, interview]

[C] was all for it, I sorta give him a little bit of advice that it was gonna be beneficial. [C's father, interview]

Daly's dualistic characterisation of offenders as either "other-regarding" or "self-regarding" (2002, p.6) belies the possibility that young people and their families, when adequately informed and permitted agency, may opt to help themselves by making genuine efforts to participate in a restorative process. Offenders' interests in restoration thus emerge as contingent on the legal and normative constraints within which a conferencing program operates.

Markiewicz (1997), also raises program context as a factor affecting conference processes: the completion of outcome plans correlated with the development of less formulaic, more meaningful undertakings, reflecting growth in the experience of convenors increasingly proficient in managing and facilitating the process (Markiewicz, 1997a, p.104; 1997b, pp.76-7). This highlights the critical role of the convenor and the importance of their training and practical experience, as G's conference illustrates. In this case, the alleged goal of strengthening the young person's supports seemed dwarfed by the victims' voices, suggesting inadequate pre-conference preparation.

¹⁶⁶ A community based order (CBO) without a conviction, instead of a supervision order, for example.

In Victoria, pre-conference assessment and preparation is crucial: “an intervention in itself” (convenor’s interview), and a defining feature of the program. Progress made by the young person and their family, from meeting to meeting, is documented in a detailed report providing magistrates with vital contextual background to each case. Moreover, this assessment phase is

not just about preparation for the conference — it’s mostly about gathering history and information, and about working with the family, getting them to think about possible outcomes ... helping them to deal with truths rather than the stories they tell. [Convenor, interview]

Particularly in light of G’s experience, this convenor’s words are telling:

...where the conference goes ahead without that level of preparation, there is much more of an element of shell-shock when the emotive stuff is presented— much more likely to induce shaming, for example —and decisions are more likely to be made without having been thought through to the same extent; therefore outcomes are less likely to be lasting¹⁶⁷.

This may explain what happened in G’s conference: perhaps his convenor¹⁶⁸ did not adequately brief G and his parents on possible outcomes or strategies to address G’s offending. Did shame or guilt motivate G’s parents to agree to excessive commitments? Perhaps they were simply carried away by the process. More effective training, nonetheless, might have averted such an outcome; indeed the convenor’s skill level may be symptomatic of program limitations. Recall, for instance, that the loss of the tender hinted at problems exacerbated by staff turnover, loss of full-time workers, and a shortage of training and experience. Structural constraints such as these highlight the need for conferencing practice and outcomes to be viewed in context of a program’s particular characteristics and circumstances — its history, jurisdiction and political milieu — before valid conclusions are drawn.

¹⁶⁷ Taken from notes of interview with convenor (20/8/03).

¹⁶⁸ G’s convenor’s previous conferencing experience was largely in representing victims.

6.2.3 Construing success

‘Success’ — what it means and how it is measured — is similarly a matter of context and perspective. Emblematic of the differences between the seven conferences, for example, is that G’s plan was not fulfilled; yet on the day of G’s conference the mood was optimistic, the immediate responses approving. So while compliance is tangible and easily quantifiable, it offers limited insight into the process. It masks, moreover, a range of more precise indicators. A ‘successful’ outcome plan is one which is achievable, meets the needs of all participants, and is fulfilled. This might encompass relevant commitments, expressed succinctly; an explicit, realistic time frame; and the young person’s own words, so they ‘own’ the undertaking and responsibility for carrying it out. While no single aspect can prefigure success, a conference that ‘works’ will exhibit such features.

Other more subtle signs of success are harder to gauge: a sense of relief or closure; a feeling of having done the right thing. C, for instance, described the best thing about the conference as “leaving! Shaking hands [with the victim]”, saying,

I felt heaps better after it ... don’t think about it anymore. [C, interview]

In interviews, family members construed the ‘success’ of their boys’ conferences in the following ways:

...this has made him think about it. [A’s grandmother]

...it achieved what it was set to achieve ... that [D] learn a lesson, he got a second chance and had to pay for the deed. [D’s father]

...helped him realise how it affected the victims and other people. [C’s father]

...helped [E] to realise that what they did just didn’t finish on that night... [E’s mother]

These constructions of ‘success’ reflect a range of priorities: the paramount concern of family members was for their young person to be accountable for their social conduct, to understand the effects of their actions on others, and to be actively involved in making amends. Additional signs of success, such as the young person’s non-conviction, become evident after the conference. Other indications, including the relief and release conferred through dialogue, the exchange of viewpoints and the expression of emotion may be revealed in closing comments and in symbolic interactions between parties, such as B’s concluding handshake with ‘V’.

For families, and the young people themselves, the most significant indicator of success may well be the most intangible: subtle shifts in attitude and perception that may signal gradual behavioural changes and the pragmatic acceptance¹⁶⁹ of norms and social rules. From A’s youth worker’s perspective the process worked because, although it was “incredibly intimidating”, there was no anger or hostility expressed and “[A] didn’t come out of it feeling traumatised”; yet it was satisfying and constructive for the victims and their representatives. Moreover, it was “morally strengthening” in that it reinforced A’s purpose, resolve and “connectedness” — both with the community and with his family:

I certainly would’ve been proud of [A] if he were my nephew or grandson.

[Youth worker, interview]

For convenors, success may be construed differently: having enough time to prepare, so that participants can make informed decisions; engaging meaningful support for the young person — not necessarily their parents, but the person “whose opinion really matters to them” at the time (convenor, 20/8/03); and an outcome plan rooted in the concerns of the victim and the community at large. In an ideal scenario F, for instance, would have fulfilled his plan, be living with his brother and enjoying working with him on weekends, finishing his apprenticeship, playing sport with a police-run team, and having a good relationship with the local police officer. The roots of his

¹⁶⁹For discussion of normative and pragmatic acceptance, see Bilton et al. 1996, p.12.

plan would thus have built a strong support network around him in a way that was meaningful¹⁷⁰.

For lawyers and police¹⁷¹,

...recidivism is the guide to the success of a conference. [F's lawyer, interview]

There are gradations to this criterion, such as a young person reoffending,

...but for something minor. [F's lawyer, interview]

Yet preventing reoffending is accepted as a significant determinant of a conference having 'worked':

Will it stop young people going further into the justice system? ... It's a selling point... [Police officer, focus group]

It's a guarantee for funding the program... [Convenor, focus group]

In the focus group additional benefits are acknowledged as important, such as reducing victims' fear of crime, and a sense of satisfaction and closure:

... a good conference is when the victim actually speaks to the [young person] at the end of the conference or during the break [or] has a bit of a chat to the person's family. [Victim representative, focus group]

It is suggested a 'successful' conference hinges on "the connection, recognising [each other] as people", which entails the offender's accountability, acknowledging and offering a genuine apology for the harm they caused.¹⁷²

Depending on participants' expectations, however,

¹⁷⁰ This example reflects F's outcome plan yet was adapted from anecdotal evidence in an interview with a convenor 20/8/03.

¹⁷¹ The police officer expressed a similar view: "If we stop the young person from offending then it's a big thing." [Police officer, focus group].

¹⁷² These points arose out of the discussion and reflect concurrence between the focus group participants. The quotes are those of the victim representative.

what might be restoring justice to one person won't be to another. [Convenor, focus group]

Thus, the problem of measuring intangible outcomes remains:

How do you measure the change in someone's behaviour, attitude and subtle changes ... unless you track each person's behaviour? [Victim representative, focus group]

Despite their logic, the infeasibility of such suggestions limits their appeal.

6.3 Conclusion

Salient features distinguished G's conference from B's, including the high level of interaction within the group, around but excluding G, and the intensity of G's family's emotional expression (in B's conference, the victims expressed their strong feelings, yet in a controlled way). Also, the level of group input into the development of G's outcome plan had implications for its feasibility. It emerged that the capacity for G and his parents to influence and participate in the decision-making was compromised by constraints operating within the conference. Layers of meaning and currents of influence, traced through their interactions, offer insight into how the process functions for its participants. Embedded are themes which emerge as central to the conferencing experience for young people and their supports: the exercise of power and agency; the context and constraints of both the conferencing program and the conference itself; and the notion of success and how positive conference outcomes may be defined and determined. These threads run through the ensuing analysis.

CHAPTER SEVEN

Facing up to it — a good step forward

7.0 Introduction

This chapter's analysis of findings is structured around the conceptual framework established in chapter three. This comprises four themes. The first examines the relationship between labelling, stigmatisation and conferencing, and how diversion from further or more serious offending can occur. Secondly the nature of crime as conflict is analysed: how the ramifications of an offence extend beyond the victim and the offender to affect their families and communities, and the paths towards resolution. Examined thirdly are the circumstances and extent of community involvement in the resolution process and the effects of this participation on the young people and their families — how they respond to and experience this engagement. And, fourthly, how young people's behaviour is influenced by the input and expectations of others in the conference: the sources of social control and how these manifest under conferencing conditions.

Earlier discussion establishes the study's theoretical stance as interpretive; hence, the focus is on the construction of meaning and the negotiation of social interaction by conference participants (Scott & Usher, 1999, p.25). Through the abductive process, theoretical constructs are applied to the words and voices of the research participants. Critical attention is paid to the role of the offender's family and community; in examining the dynamics of the process, the experience of conferencing for the young people and their supports is explored. The analysis expounds the results of interviews conducted with the young people (A, C, D and E) and their supportive others (mainly family). These findings are supplemented and clarified by conference observations, focus group data and additional interviews with key stakeholders.

7.1 Labels, stigma, diversion — the ‘many sides of me’

7.1.1 ‘Mates’ and ‘others’

Me mates know what I’m really like. They know many sides of me, whereas others just think of the criminal side first... (Ex-inmate interviewed by Erikson, 1977, in Braithwaite, 1989, p.88)

In light of the study’s focus on the role of young offenders’ familial/social support, Erikson’s interviewee raises a key distinction: between the reactions of ‘mates’ and ‘others’ to offending. ‘Mates’ — significant others, familiar with his character, aware of his qualities and traits, and who presumably care about him — imply an acceptance of the whole person. This issue is central to the idea of family¹⁷³ support as unconditional:

I support him ... I love him dearly... [A’s aunt, conference]

I will love him no matter what... [A’s grandmother, interview]

...as a mother you still have to support him ... you may not like it, you may not agree or approve, but what can you do? [E’s mother, interview]

He’s my son ... I’ll always be there. [F’s mother, conference]

...he’s my only son and I love him... [G’s mother, conference]

Interesting to note is that this unconditionality was verbalised by women; the men appeared less demonstrative. Notable, moreover, is the fact that such support does not only come from ‘family’ in the sense of a nuclear social unit¹⁷⁴; B’s ‘aunt’ and housemate provided material and moral support where his parents were unable.

¹⁷³ Recall that, although most of the participants were parents, family in the context of this research does not refer only to parents but includes those by/to whom the young people felt supported and connected, for example, A’s grandmother, aunt and youth worker; B’s ‘aunt’ and housemate.

¹⁷⁴ That is, parents and children living together as a discrete societal entity.

Close kin support, though often marked by familiarity and care, may be laden with conditions and expectations, as the data reveals. The shock and disbelief of young people's supports was a common theme. C's father, for instance, talks about not expecting C to behave as he did:

[I was] Pee'd off ... I'd already been there once with [C's brother] and I didn't think [C] would do it. [C's father, interview]

Here emerges a central paradox: the support of family (or 'mates') is characterised by caring and connectedness (Resnick et al. 1993; Resnick et al. 1997), yet is also textured with moral and behavioural expectations. The contract is implicit: support obliges right behaviour. As Prichard notes, "the wrongdoings of a child reflect negatively upon the parents" (2002, p.333); apparently the unconditional nature of the support legitimises its obligational tenor.

In contrast, the second point arising from Erikson's interviewee is the stigmatising, exclusionary effect of being labelled a 'criminal' by generalised 'others' (Mead, 1934, p.152; Becker, 1973, p.30-3; Birenbaum & Sagarin, 1976, p.104-8; Paternoster & Iovanni, 1989, p.376). A 'criminal side' is not typically perceived as one of 'many sides' (see Braithwaite's 'master status traits': 1989, p.55). B's friend, for instance, invokes an archetype in her observation of B:

He doesn't come across as like that — he's just a boy, a normal kid. [B's conference]

"Like that" implies a way of being — inclined towards violent behaviour, inspiring fear and disgust in others — which is antithetical to being "just a boy, a normal kid". Furthermore, "like that" suggests being characterised by certain chronic traits, in this case those embodied in B's offence, as though they were permanent features. The connotation is of someone representing a persistent and abiding threat. For B's supports, however, this label does not fit. C's father echoes their perception:

[The conference] wasn't like court [with] a bunch of criminals walking around. [C's father, interview]

For him court, even the Children's Court, conjures images of a 'criminal type'. Such stigma is difficult to remove (Becker, 1973, p.32-3). The conferencing approach, however, aims to soften the 'criminal' label applied by standard criminal justice processes by separating the offender from his¹⁷⁵ offence; thus the threat of lasting stigma is diminished.

7.1.2 Diversion — down or out

Young people's risk of stigmatisation through labelling increases concomitantly with their level of contact with police and court (Polk & Alder in Chappell & Wilson, 1986, p.315), highlighting the significance of diversion, either out of the system or elsewhere within it (Polk, 1994, p.129). Although conferences in Victoria proceed from a court hearing, the importance of 'downward' diversion¹⁷⁶ remains. This emerged as a primary concern of the young people's supports, including C's father, who saw his role in the conference as:

...to make sure he didn't get a conviction out of it. [C's father, interview]

E's arresting police officer expressed cynicism about the process: E was lucky he qualified for the program; he should have been in the County Court (Police informant, E's conference). His comments hint at his labelling of E as a 'serious offender', a view which had softened by the end of the conference. Apparently this is common:

[there's] a police perception group conferencing can be a soft option, but then afterwards they say it's a lot more than what would happen in court... [Police officer, focus group]

¹⁷⁵ The masculine pronoun is used here since the young people in the study were all male.

¹⁷⁶ 'Downward' diversion means diverting offenders down the sentencing ladder towards lesser penalties (cf. Polk's diversion "into a program", 1994, p.129).

Such attitudinal shifts have diversionary implications: police embracing conferencing may increase awareness of the approach as a meaningful option for young offenders, expanding its use and lessening sentences. According to A, for instance, conference participation was,

...better off than going straight to court and going to jail. [A, interview]

While the researcher sensed a slight exaggeration in his hypothetical 'going to jail', it was clear that A's participation indeed diverted his path from further progression through the juvenile justice system¹⁷⁷ (Klein, 1979, in Hogg & Brown, 1985, p.396; Alder & Polk, 1985, p.279).

Diversion entails reconstructing a self-concept distorted by, for example, criminal associations (A) or by the potential stigma of

getting a conviction and having to carry that around for years. [D's father, interview]

C's piqued account of his arrest, in contrast, implies a self-image far from that of 'criminal'. C's indignation was due mainly to being treated less fairly than his co-offender:

he got to go in the comfy back seat of the car — I got shoved in the back of the divvy van with two BMX bikes shoved right up against me... [C, interview]

C's expectation of just treatment by the police reflects a non-criminal self-image, associated with 'primary deviation' (Lemert, 1951, 1972). According to Lemert's framework, negative social reactions may give rise to a remodelled self-concept which can lead to 'secondary deviation', whereby stigmatisation might be seen as inevitable (Paternoster & Iovanni, 1989, p.381; Shoham & Hoffmann, 1991, p.119). As the focus group revealed,

¹⁷⁷ 'A' received a good behaviour bond instead of a likely supervision order or a custodial sentence which would automatically have entailed a conviction (*Sentencing Act, 1991*, s.7). Certainly a supervision order this time would increase the likelihood of a custodial sentence next time.

A lot of young people think ... I've stuffed up my life, I'll never get a job ... what the hell... [Lawyer, focus group]

The conference process, however, moderates the negative social reaction by providing young people with an opportunity for influence and involvement in important decisions, the respectful acknowledgement of the group, and a second chance. These factors counteract the negative effects of labelling by fostering a positive self-concept, as a lawyer hints, imagining a young person saying:

'This was an episode in my life and I can now regain trust of my parents and Mrs Smith whose house I robbed ... and move on'. [Lawyer, focus group]

The re-offending risk is thus reduced (Shoham & Hoffman, 1991, p.120). As D's father put it:

They're at that age where they *do* do stupid things, they experiment, they're easily led ... if they get caught and have to pay some form of restitution early [they won't] get caught experimenting with bigger and better crimes. [D's father, interview]

As C's father intuitively, most will grow out of crime:

...sometimes boys will stuff up once — they learn their lesson, they won't stuff up again. [C's father, interview]

7.1.3 Conference as catalyst

As Hayes and Daly (2003a, p.21-2) suggest, the conference functions as a catalyst for this progression, as family members hint:

It's woken him up a bit — probably made him grow up a little bit. [D's father, interview]

He's a bit more wary, now, of what he's doing and who he's associating with. ... It's made him stop and think a little bit, about his actions. [A's grandmother, interview]

Young people's reflection upon their behaviour, through identifying with others in the conference, can motivate them to adjust their identity according to the norms and expectations conveyed by the group, evoking Cooley's (1902, p.184) 'looking-glass self' (see also Birenbaum & Sagarin, 1976, p.103; Haralambos, 1986, p.545-6; Shoham & Hoffmann, 1991, p.103; Matsueda, 1992, p.1581-4). Relating his family's shocked reaction to his arrest for badging cars, for instance, A confides:

[it's] really the sorta stuff you do when you're eight, nine years old. [A's interview]

He thus distances himself from his past actions, his deprecating remark conveying an almost cocky pride in having matured out of such childish behaviour. Also discernible, however, is an assumed expertise in the subject of offending, from which could be inferred a self-concept linked to such activities through, for example, absorption of criminal norms from his father (Loeber & Stouthamer-Loeber, 1986, in Laub & Sampson, 1988, p.362; Sarantakos, 1997). His grandmother's account of this potential influence is derisive:

His dad told [A] about [a notorious criminal, 'X'], "I was inside with him — he's not such a bad bloke" — what bullshit! He was never inside at the same time as ['X'] — do the maths! [A's grandmother, interview]

A's presumption that eight-year-olds commonly engage in criminal damage exemplifies the placing of a criminal peer group's norms and values above the community's, as implied:

I felt as if they were thinking that I was the leader of the group, like I organised it and everything like that when I wasn't, I was just doing what I had to do. [A's interview]

Together with his denial of personal responsibility for the group offences, this emerges as an archetypal 'neutralising' technique (Sykes and Matza, 1957). Young offenders, especially, use such tactics to rationalise their behaviour whilst preserving their self-image (Becker, 1973, p.28-9; Vold & Bernard, 1986, p.253; Shoham & Hoffmann, 1991, p.93-4; Wundersitz, 2000, p.110). In describing his part as "doing what I had to do", A maintains a notion of being responsible to himself and to the group, yet not for the group's behaviour:

It wasn't just me; I got blamed for just about all of them. [A's conference]

It seems the critical issue is the sense of confidence in and control over the processes ensuing from their crime, which determines the young person's level of responsibility for its consequences. This shapes the experience of the conference and the lessons learnt from it; for example, as A's supports tell:

The profound change in [A] was his preparedness to engage [after] getting a good response when he made attempts to [do so]. [A's youth worker, interview]

I think that he might have been a little bit pleased with himself, you know, for fronting up to it. [A's grandmother, interview]

Apparently the 'good response' of others triggered then validated (via positive reinforcement) A's change of approach and attitude. Internal labels are thus linked to the external labelling process through the reactions of others, evoking Becker's (1973, p.34) 'self-fulfilling prophecy' (Birenbaum & Sagarin, 1976, p.112-6; Haralambos, 1986, p.432-4; Vold & Bernard, 1986, p.252-5; Shoham & Hoffmann, 1991, p.112, 115).

Part of external labelling involves the recording and reporting of behaviour: the ascription of perceived characteristics according to normative criteria. E's arresting officer stated that E showed "no remorse whatsoever, denied everything", and was "a bit cocky" on the night of his offence. This behaviour, though not observed during the conference, further typifies Sykes and Matza's (1957) 'techniques of neutralisation'. According to E's mother, though, E's

contrived nonchalance actually masked his shame, misconstrued by the policeman, who was

...not old enough to have teenage children... [E's mother, interview]

Her insight into E's reaction is telling, and exemplifies the earlier point about the familiarity and understanding of significant others:

...sometimes when they're in trouble they do act that way ... you know, cocky and that he didn't care — but he cared, he knew he'd done wrong. [E's mother, interview]

E's experience illustrates young people's susceptibility to the effects of labelling. Conferencing tempers this. By revisiting the incident, listening to how others were affected, E could view his actions from the perspective of 'the generalised other' (Mead, 1934, p.152; Haralambos, 1986, p.545), and imagining himself as others might see him, assume a new position in relation to the victims: that of cooperative participant in a restorative process. Thus a positive identity may be restored. The experience of G, conversely, shows how this possibility may be confounded.

7.2 Repairing harm, reconciling interests

...a process built on the assumption of an ultimate reconcilability of interest¹⁷⁸
(Griffiths, 1970, p.373)

The process through which labelling occurs involves subjective judgment and partial truths, potentially adding to harm caused by crime. This includes harm to offenders (Van Ness, 1993, p.259; Wundersitz, 2000, p.110), who feel, as a convenor observes,

¹⁷⁸ Griffiths contrasts a "Battle Model" of criminal procedure with his imagined "Family Model", which assumes the "ultimate reconcilability of interest between the state and the accused (and the convicted as well, of course)". The use of this quote here interprets these interests as including those of victims, which are otherwise represented by "the state" (Griffiths, 1970, p.373). Griffiths' model evokes Mead's (1917-1918) contrast between the extremes of a society's "attitude of hostility" and a "reconstructive attitude" in response to crime (in Daly, 2002, p.9); see discussion at 3.1.

...immense loss in terms of trustworthiness — ‘people don’t trust me anymore, I wish people would trust me’. [Convenor, focus group]

Notwithstanding perceived constraints on reconciling victims’ and offenders’ interests (Daly, 2001; Daly, 2002), conferencing presupposes the possibility of resolution through cooperation and dialogue (Griffiths, 1970). Recognising the extent of injury to people and relationships enables the first steps towards repair and restoration.

7.2.1 Shame, shock and disappointment

In exploring the nature of the harm caused by their young people’s offending, family members were asked whether they had indeed felt ‘harmed’¹⁷⁹. Agreement was unanimous and unequivocal. Feelings included shame, shock, and disappointment:

I didn’t tell [his mum] ... until after the court case ... I weren’t gonna ring up and scare the shit out of her and say he’s going for armed robbery... [C’s father, interview]

...I’ve never been more disappointed in anything in my life. [D’s father, interview]

There’s not many people we’ve told because I suppose we’re ashamed that he did something like that ... we didn’t want anybody to feel any differently about him... [E’s mother, interview]

Even within families the information was restricted, to limit the extent of the perceived shame and dishonour, and to protect their boys from disgrace:

...my mother doesn’t know and only one of my sisters knows... [E’s mother, interview]

The intensity of E’s parents’ shame, in particular, was palpable. The sense of E having not lived up to standards — set by his upbringing, the expectations of

¹⁷⁹ See family members’ interview schedule, appendix 11.

his family and others around him, and the moral framework on which these rest — weighed heavily:

[We were] completely devastated ... To think that he could, you know, that one of our children could do something like that, I mean they've all been brought up the same way and they know right from wrong, and they've all had ... the best education that we could afford for them and they've been brought up Catholic... [E's mother, interview]

Her disbelief, that their son “could do something like that”, alludes to a sense of abandonment, rejection, a breach of faith and trust, a violation of confidence (Van Ness, 1993, p.259, 267; Wundersitz, 2000, p.110). “Like that” recalls earlier discussion around labelling: implying an ‘otherness’ about the action, separate from and antithetical to the ‘child’. Furthermore, the expression of families’ sense of betrayal reveals deep-seated feelings of guilt:

You feel like I haven't done a good job, you know, with him, even though I'm here twenty four hours a day... [A's grandmother, interview]

This echoes sentiments expressed in conferences, where families spoke of their own sense of fault:

Not being there with them to give the fathering support... You question yourself as a parent and a man — ‘what have I done wrong?’ [F's father, conference]

We couldn't believe he would do something like that ... [You] wonder, ‘have I done something wrong, as a parent?’ [G's mother, conference]

Entwined with their guilt, however, is a sense of having done what they could, a sense of powerlessness to do more:

I don't have much money to buy him things, but at least he's got a roof over his head, a home, and good food on the table. [A's grandmother, conference]

I thought he had a fairly good upbringing... [D's father, conference]

We know how much time and effort and love we've put into [him]. [G's father]

This impression of families' having their investment and expectations spurned underlies the emotional upset and wounded relationships rising from a young person's crime (Zehr, 1990, p.181; Van Ness, 1993, p.259, 267; Claassen, 1996, p.1; Watson, Boucherat & Davis, 1989, in Cavadino & Dignan, 1997, p.245; O'Connell et al. 1999, p.61-4).

7.2.2 Facing the victims — rousing remorse

Evidently the conference functions as a catalyst in the process of repairing this harm (Hayes & Daly, 2003a, p.21-2). Part of this process is the shame and discomfort experienced by the young person in hearing the impact of their actions and the remorse invoked through this experience. Before their conferences, the boys were most worried about facing their victims¹⁸⁰. C found the conference setting intimidating, having anticipated a

small room with a table ... thought it'd be smaller. [C, interview]

He felt uncomfortable, exposed, vulnerable, the hardest thing being "talking ... [with] everyone looking at me" (C's interview). This emerged in the focus group too:

It's daunting, in a small room with no table to hide behind ... young people often say there was nothing to hide behind. [Conference convenor]

A had imagined the worst:

I thought it would be very uncomfortable. But it turned out alright. [A]

While for D and E it was more predictable:

It was how [the convenor] explained it would be. [D]

¹⁸⁰ As A, C, D and E reported in interviews.

I expected it to be draining as it was but I still expected it to work as it did. [E]

E claimed the worst thing was:

...the drive there — I fell asleep on the way — I was buggered after work. [E]

This may have been a glib reflection on an experience already firmly in the past for him, to which he now gave little thought¹⁸¹. Also the intensive pre-conference work¹⁸² — “answering the same things each week, over and over and over again” (E’s mother, interview) — had prepared him for what to expect and how he might respond. In consequence, the conference may well have seemed a perfunctory exercise, inspiring little affective resonance (Tomkins, 1962, in Serventy, 1995, p.247-9; Moore & O’Connell, 1994, p.71; Moore et al. 1995; O’Connell et al. 1999, p.23). That it not to say E’s remorse was not genuine, just that it was already resolved and beyond emotion — it had become a rational cognitive response and a matter of practicality; E wanted it over and done with. The fact that E’s victim did not attend the conference apparently made it less confronting, too.

Even without victims’ physical presence¹⁸³, the telling of their stories (by representatives) invoked affective responses. In reliving their initial emotional reactions, E’s parents’ anxiety, shame and discomfort were evident; F’s parents, too, openly expressed their feelings of confusion, shock, and guilt. Such frank public disclosure appeared to have a strong remorse-eliciting effect on the boys, as E’s father perceived in E’s

...body language, the way he talked with the victim representative. [E’s father, interview]

¹⁸¹ The interview was conducted two and a half months after the conference and the ensuing court case (a week later). The conference, however, took place 18 months after the offence, having been adjourned three times by Anglicare, due to staffing issues.

¹⁸² The convenor spent four hour-long sessions with E four times prior to the conference, going over likely scenarios and the questions E would be asked.

¹⁸³ None or only some of the victims were present in A’s, E’s, F’s, and G’s meetings.

7.2.3 Empathy, shame and remorse

Confirming Maxwell and Morris's (1999) suspicion that empathy triggers remorse (Morris, 2001, p.12), the findings suggest that the young people were moved by their realisation of how others were affected (through empathy) more than by the disapproval of the group (via shame). Though certainly the boys interviewed found the conference difficult, their comments afterwards suggest that it was not as bad as they had imagined it might be; if shame were the prevailing factor, it is conceivable that their reflections on the experience may have been less positive. As A's youth worker observed, for instance, one indicator of conference success was that A

didn't come out of it feeling traumatised. [Youth worker, interview]

Rapport with the victim aroused emotional reactions; the boys' dawning awareness of their responsibility for these effects was apparent. While some such responses were indiscernible to the researcher, to their supports they were unmistakable. As C's father noted of C:

I could see the redness in his eyes ... he was getting upset. [C's father, interview]

A's grandmother observed A's reaction to the victim's presence:

He gets a look, on his face, when he's really worried about something ... your heart just breaks a little every time... [A's grandmother, interview]

Feeling "very ashamed" herself¹⁸⁴, she sensed A's shame, too, particularly when the young woman talked about A knowing her family's house and expecting more respect from him¹⁸⁵. A's grandmother felt sorry for her

¹⁸⁴ In her interview, A's grandmother reported feeling "very ashamed" when A spoke, and "disgust and shame" when the policeman recounted the offences.

¹⁸⁵ For this victim, it was not the offence itself which caused her anger and disappointment – only a few dollars and a packet of cigarettes were stolen, as well as the minor damage to her car – it was the fact that A knew her brother and knew the house where the car was parked; this should have stopped him.

...because [A] *knew* her and I was so disgusted to think that, you know, nobody looks after one another any more – it's a rotten world. [A's grandmother, interview]

This tallies with E's mother's experience of shame as linked to the behaviour not matching shared expectations and ideals (recall Moore's notion of "common decency", 1992, p.214). The vicarious experience of this emotion by family members on behalf of their young people suggests that family support functions as an emotional diffuser: dispersing feelings of shame, guilt and responsibility. In their dispersion, the affective responses resonate within the group through empathic exchange (Tomkins, 1962, in Serventy, 1995, p.247-9; Moore & O'Connell, 1994, p.71; Moore et al. 1995; O'Connell et al. 1999, p.23-5; Katz, 2002, p.32). A's grandmother, for example, in response to A's shame, felt

...a little bit sick, but I still thought it was the right thing for him to do.

It appears that this shame-sharing by families also magnifies the experience of this emotion for the young people; as Braithwaite puts it, "the moralising impact of shaming is multiplied" (1989, p.83). Braithwaite sees this as a positive function, promoting reintegration. As Prichard points out, however, besides sensing their children's "discomfort, shame and fear", families may feel

...guilty that they had not prevented a situation, worried that they will not be able to avoid future problems... (Prichard, 2002, p.333).

These issues emerged in the conferences observed, highlighting the importance of maintaining the focus on realistic solutions.

7.2.4 Getting the message

D's father felt stronger empathy with the victim:

I thought, '[D's] getting the message now' ... I was actually happy for [the victim] to get a chance to do it. [D's father, interview]

Furthermore, he perceived value in D's shame,

...and guilt – good! Couldn't get enough of that! The guiltier he felt and the more shame he felt, the better I felt, 'cause I thought ... he's actually learning a lesson, you know, which is good. [D's father, interview]

While acknowledging his role “to support him in case he got overwhelmed”, D's father, in contrast to A's and C's supports, was concerned more with overseeing and witnessing D's atonement than sharing his experience:

I was glad that he was having to do it, and suffering ... I was happy to see him uncomfortable and *genuinely* sorry, you know, and I thought this is good for him, I thought he's gonna learn something from this... [D's father, interview]

Despite his father privately rejoicing in his discomfort, D nonetheless felt supported by him. Interestingly, D reported that at the time of his offence he felt he could most rely on his older sister's support¹⁸⁶; during the conference, however, while sensing the support and respect of both his father and the convenor, it was his Dad on whom D felt he could rely most¹⁸⁷. C's father provides a clue as to how such support may function, when asked if he sensed whether C felt any shame:

Yeah, definitely, especially with his dad sitting beside him ... I knew it was biding home (*sic*). [C's father, interview]

According to his father, C's growing awareness of the impact of his behaviour aroused his “remorse and regret”. This reflects the power relations shown in figure 6.7, representing the supports' and victims' empathic exchange, reinforcing the young person's underlying obligation to ‘make things right’ (Zehr, 1990, in Van Ness, 1993, p.259). Empathy thus serves to restore power

¹⁸⁶ D's older sister (who lives in a nearby suburb with her partner), did not attend the conference; it was D's father who attended court and later the conference with him (as reported in D's interview).

¹⁸⁷ In the interview D was asked whether any of these words describe what he felt from his Dad during the conference: Support: *Yes*. Pressure: *No, not really*. Respect: *Yeah* [D's interview].

to the individuals affected, victims and supports, repairing at least some of the harm done.

The reparative function of this empathic exchange, however, apparently depends on the young person and their supports feeling absolved of their guilt and shame. For E's family, for instance, the conference afforded them a sense of "closure", allowing E to "get on with his life (E's mother, conference). His parents were vindicated by the fact that E had neither reoffended nor shown any signs of reoffending. G's conference, however, signalled a different outcome. While the conference itself seemed optimistic and encouraging at the time, retrospection reveals fatal elements.

G's victims' paramount concern — though expressed variously — was for G to realize the impact of his actions. One couple, besides their "emotional distress", estimated

we're \$16,000 out of pocket, cash, which works out to be \$52,000 over ten years at a compound interest rate... [Victim, G's conference]

Such calculations of 'harm', while likely to inspire little resonance for a sixteen year old (especially a low-functioning ADHD sufferer), may plausibly have elicited his parents' guilt, through empathy as home-owners themselves. This, combined with G's inability to repay this fiscal harm, may have set up the initial impediment to the restorative process. The second family's representative emphasised their desire "not to make [G] feel bad ... but to explain what happened". Their concern was selfless: "think next time ... don't get into trouble again"; and

Listen and learn from your parents and adults around you and try and get the best out of life... [Victims' representative, G's conference]

Perhaps these mixed messages counteracted each other. Too many versions of 'harm' might be difficult to reconcile with a young person's capacity to make amends in a meaningful way. G seemed besieged by the varied demands of victims, yet impassive to his parents' affective responses (tears, empathy,

guilt, exasperation at G) and their insistence that G “learn from this” and “get the message” (G’s mother, conference).

Furthermore, the sense of G’s incapacity to meet these expectations seemed to deter him from actively participating. G contributed a practical point¹⁸⁸ with his offer “to say I’m sorry”. Yet when he suggested a letter to an individual firefighter, signifying empathy and agency on his part, his efforts were disparaged:

We don’t need apologies, we’d rather see some action. [Fireman 1, conference]

Hence, G’s most significant part in the decision-making process was his disengagement from it¹⁸⁹ (Boulle, 1996, p.59), a reactive though perhaps predictable response to a disempowering experience. G’s ‘getting the message’ and capacity to make amends were apparently impeded by the sheer size of the group and its seemingly conflicting demands. Such factors emerge as critical to the realisation of restorative goals.

7.3 Community involvement — ‘gathering of the tribe’

...some other forum, outside the harsh rules of evidence which excise context; some better, broader, freer, less rule-bound *gathering of the tribe*; a forum in which everything might be said, everybody listened to: where bursts of laughter and shouts of rage might not be outlawed: where if people agreed to take turns everyone might at last, at last be *heard*.

(Helen Garner, 1995, *The First Stone*, p.208)

Garner’s description evokes a community engaged in a restorative process. The ‘gathering of the tribe’ — bringing together the social network of significant and supportive individuals around a young person — entails the sharing of experience, free expression of emotion, and listening in a mutually respectful, non-judgmental setting.

¹⁸⁸ This became Point 5 of G’s outcome plan: “Letter of apology to victims who didn’t attend”.

¹⁸⁹ As Boulle suggests (1996, p.59), “The apparently weaker party may have significant sources of power other than funds or lawyers”; (see discussion of power and agency at 3.3.2).

7.3.1 Being heard

A's victim illustrates the importance of being 'heard': it was not the seriousness of the crime that concerned her; she wanted A to understand her feelings of disappointment and betrayal (Watson, Boucherat & Davis, 1989, in Cavadino & Dignan, 1997, p.245; Roberts, 1995, in Umbreit, 1996, p.10). A's pledge to recover a badge for her car made both material and symbolic reparation (Retzinger & Scheff, 1996, p.316), symbolising his accountability for causing the damage and his efforts to repair it. This marks his acceptance of the group's norms and expectations as legitimate (Bilton et al. 1996, p.12), a sign of his moral development, maturity and "ability to self-reflect", as noted by his youth worker¹⁹⁰.

Mutual respect emerges as fundamental to the process of listening and being heard through which reconciliation may occur, as B's conference showed (Walgrave, 2002, p.106; Salomone, 2003, p.7). Though victims' and offenders' interests may never perfectly accord (Daly, 2001; Daly, 2002), this does not preclude "ultimate reconcilability" (Griffiths, 1970, p.373), restoring dominion for the individuals involved (Braithwaite & Pettit, 1990; Braithwaite, 2002). This includes the offender having the chance to say, for example,

'I never meant to harm anyone, I never even realised I would, I just wanted the money...' [Convenor, focus group]

Being heard may be enough for some victims, such as in A's, B's and F's conferences¹⁹¹. Others, such as C's and F's, may demand an apology or an explanation, or, as in A's, D's and E's cases, more substantial recompense¹⁹². G's victims' intents varied, making restoration more challenging.

¹⁹⁰ A's youth worker mentioned this in his interview as well as in the conference.

¹⁹¹ As indicated, A's victim, the young woman, wanted A to understand her disappointment; B's victim and his family also needed B to see how his actions had affected all of them so severely; one of F's victims "thought some nice gesture [that F thought up himself] would be alright" (victim's representative in conference), while his other victim wanted him to know he was still very angry.

¹⁹² A's absent victim was out-of-pocket \$800 (insurance excess and cost of fixing door) and requested compensation; A (being one of four co-offenders) promised \$200. D's victim wanted D to pay a third of his \$3000 costs. E's victim requested the E and his co-offenders repay him \$400 for medical expenses.

The respectful listening conditions established by the convenor¹⁹³ are crucial, to “avoid loose cannons¹⁹⁴” (F’s lawyer, interview). For offenders, confronting the harm they have caused evokes fear of unrelenting and possibly vengeful condemnation. Moreover, their involvement cannot be downplayed,

...having the family there, having the police there, having the victims there [creates an] environment where more comes out so everyone gets a better understanding of what happened. [Police officer, focus group]

Their readiness to engage in the restorative process – to apologise and make amends for their actions – depends upon their feeling safe and supported in this process. These factors hinge on the trust and confidence the convenor is able to foster – reflecting the skills of the convenor and the context of the program – and the presence of caring others to and by whom the young people feel connected and supported, and from whom they get a ‘good response’ (A’s youth worker). The ‘positive connotations’ (Hogg & Brown, 1985, p.402) of this ‘community’¹⁹⁵ (Moore, 1992, p.205; Serventy, 1995, p.253; Strang, 2000, p.22-3), derive from its inherent care and concern for the young person. Implicit is its willingness to support them in the restorative and reintegrative process, the ‘mutual commitment’ to which Salomone (2003, p.7) refers.

7.3.2 The role of community

Community involvement in the conference emerges as critical for victims to see the offender’s actions in a social context (Cernkovich & Giordano, 1987, p.295; Shoham & Hoffmann, 1991, p.98; Wilkins, 1991, p.312, in Bazemore & Umbreit, 1995, p.301). Thus,

The young person isn’t seen as a single entity ... there are family dynamics. [Lawyer, focus group]

¹⁹³ In the convenor’s introduction: see appendix 17.

¹⁹⁴ This might include victim representatives “going on too long” (F’s lawyer, interview).

¹⁹⁵ This community is variously described as a ‘community of interest’ (Moore, 1992, p.205), ‘community of care’ (Serventy, 1995, p.253), and ‘community of concern’ (Strang, 2000, p.23).

It is often through the young person's supports that empathy-inspiring information is shared. Such as the father who divulged that his terminal illness triggered his son's 'crime spree':

the victim ended up saying, god if I was in your shoes I probably would have done something worse... [Victim representative, focus group]

Such disclosure promotes restoration by creating:

an understanding of what this young person was going through... [Victim representative, focus group]

Police, too, form an important part of the conference community. Reportedly, young people "always ask":

'Will the police officer be there who arrested me?' ... 'Who will be there from the police?' ... 'Do they know me?' [Lawyer, focus group]

Apparently, seeing the officer who arrested them evokes a feeling of familiarity, of connectedness (Resnick et al. 1993; Resnick et al. 1997). C, for instance, felt he could rely on the police officer for support in his conference (C's interview). For young people, the interaction with police under atypical circumstances is meaningful:

...whether or not they came in uniform ... they saw the police as not just there to get stats up, to punish them, but to act as a go-between, they really did see [them] in a different light ... as someone who was really interested in the outcome. [Police officer, focus group]

This highlights the function of the conference as a symbolic 'community': the participants represent a wider circle of people with an interest in the offender's reintegration, if only for their own safety and reassurance (McCold, 1996, p.92-3). The young person's perception of this genuine interest fosters the mutual respect required for reintegration to begin (Walgrave, 2002, p.106; Salomone, 2003, p.7).

7.3.3 Confronting community

Conversely, restorative success may not arise if safety, support and respect are not perceived by the young person. For instance, G's feelings of connectedness to (Resnick et al. 1993; Resnick et al. 1997) and support from his parents might have been diminished by their empathy with the victims and the group's subsequent sermonising:

[G] hears us preaching ... [it's good for him to be] hearing everyone else say the same thing. [G's father, conference]

As suggested above, this collective moralisation may have been alienating for G. This highlights the danger of the "moralising impact of shaming" (Braithwaite, 1989, p.83, in Prichard, 2002, p.332) and the risk inherent in the 'community' as a 'space of regulation' (Burchall, 1981, in Hogg & Brown, 1985, p.403), recalling Stubbs' warning:

We shouldn't presume that the informal is necessarily benign or even neutral (in Alder & Baines, 1996, p.46).

Family support may be laden with expectations (Prichard, 2002, p.333), as noted, which may heighten the young person's experience of shame. In fact, many speak of their remorse in terms of the "shame that they've brought to their family" (victim representative, focus group). Potential stigmatisation reinforces the need for young people to feel safe and supported, to strengthen their prospects of reintegration.

Notwithstanding the support of the young person's 'community', the confrontation between victim and offender in the contained setting of the conference is "pretty tough" (E, interview); "horrible" (D's father, interview); with "not a lot of upside" for the young person, having "to sit here and listen" (G's lawyer, conference). As indicated, the victims' presence magnifies this experience, whereby feelings of shame and remorse are apparently intensified for the young people and their supports. A lawyer reported one client being so

nervous,

...his first words were, 'just bash me ... that's all I want you to do, let's just get it over with'... [Lawyer, focus group]

According to another,

It's especially difficult for the young person if they're under attack ... or if they're getting the third degree — "why did you do it?" — that sort of pressure. [F's lawyer, interview]

G's discomfort¹⁹⁶ was evident, when asked to:

try and verbalise how it feels at this point. [Victim, G's conference]

Adults¹⁹⁷ expressed anxiety about addressing the group. Adolescents could conceivably feel more apprehensive, as A hinted:

...I couldn't look 'em in the eye. [A's interview]

Young people fear "having to have that kind of eye contact" with victims (lawyer, focus group). Clearly, the confronting experience is a punishing one (Daly, 1999, p.10; Walgrave, 1999, p.187; Barton, 2000, p.1, 21).

7.3.4 Young people's engagement

During the conferences observed, changes in the young people's demeanour reflected movements in the nature of the exchange and the flow of power: eyes fixed on the floor, crossed arms, feet and legs thrust into the circle, for instance, contrasted markedly with eye contact, open hands, and leaning into the circle. This is seen as a relaxing of tension in the room and ebbing of victims' power over the group (see figure 6.7). The sense of relief at the

¹⁹⁶ The researcher's observation of G's body language at this point inferred his shame: '[G] looks down at the floor, head down' (G's conference).

¹⁹⁷ A's grandmother and E's mother and father (in interviews), and G's mother (in the conference) spoke of their nervousness and apprehension about participating in the conference.

conclusion of the information stage, for example, was manifest in body language such as:

[E's] leaning forward into the group, hands together, making eye contact. His parents are watching [E] as he speaks. [E's conference, observational notes]

Focus group participants made similar observations. These emotional and attitudinal shifts signify the young people engaging with the process. A's grandmother noted of A, for example:

He was quiet and controlled and stopped before he said things ... normally, you know, he rants and raves a bit. [Interview]

E's parents 'watching' him indicates the supports' role as witness to this engagement (as D's father, see 7.2.4). The "pedagogical possibilities" (Christie, 1977, p.8) of this experience emerge as conditional upon aspects of the conference process: the physical and emotional support of a 'community of care' (including but not necessarily family); conditions of mutual respect and listening; and the ensuing prospect of agency for the young person (Salomone, 2003, p.7). Any deficit in these factors undermines the capacity of the process to engender reparative and reintegrative outcomes, as evidenced by G's experience.

7.4 Sources of social control — toeing 'the line'

And on a day we meet to walk the line
And set the wall between us once again.
(Robert Frost, 'Mending Wall', 1914)

Frost's mending wall may be seen as a metaphor for the restorative process: walking 'the line' entails negotiating and reinforcing moral boundaries (Erikson in Griffiths, 1970, p.386); 'the wall between us' describes the bounds of individual liberty; and setting the wall 'once again' involves redrawing the lines of shared behavioural norms and expectations in a pattern which is understood and accepted by everybody, providing a sense of safety and

reassurance against re-violation (Becker, 1973, p.184; Christie, 1977). Provided, too, is the opportunity for the young person and their family to actively participate in this wall-mending; by engaging in the process — making amends, apologising, for instance — they are empowered to take responsibility for continuing “moral cohesion” (Griffiths, 1970, p.387; Becker, 1973, p.27). This agency is essential for a young person to perceive connection to a community, via the symbolic

...beginnings of a new relationship between the victim and the offender. [F’s lawyer, interview]

7.4.1 Drawing the line

A critical aspect of reintegration — through young people accepting social norms — is the clear communication of limits. In B’s case these are physically symbolised:

I’ve got this big stick at my place — they all know... [B’s ‘aunt’]

Significant is that *they all know*: the rules and expectations are spelt out to everybody living under the ‘aunt’s’ roof. B apparently surpasses these:

My two teenage daughters don’t ring up and say they’ll be late or whatever — he does. [B’s ‘aunt’]

His readiness to comply demonstrates respect and suggests he feels supported and reassured by the limitations imposed on him.

In contrast, F’s hears only unqualified support from his mother:

He’s my son — no way am I not going to be there for him. [F’s conference]

Some teenagers might perceive such promises as a looseness of boundaries, liberating as much as comforting and reassuring. While comfort and reassurance accord with conditions apparently required for reintegration — “a

continuum of love” (Griffiths, 1970, p.376; Braithwaite, 1989, p.167) — unlimited freedom, combined with unwavering support, may serve to lower a young person’s behavioural inhibitions and even encourage risk-taking by reducing their stakes in conformity (Toby, 1957, in Vold & Bernard, 1986, p.234), a potentially disintegrative effect. F hints at this when he told his father:

‘I need someone there to pull me up, not the freedom that I’ve got.’ [F’s father, conference]

Evidently the synthesis of support and clear expectations is crucial. This provides fertile ground for the communication and absorption of conduct norms and moral values, as E’s father indicates:

I can talk to him ... he can listen a bit better now... [E’s father, Interview]

A’s youth worker highlights the importance of a “sense of secure boundaries” for young people; he described the reaction of A’s aunt and grandmother as marked by,

a very strong sense of moral outrage and then ... support but strong containment. [Youth worker, interview]

Though unreserved in her love for her grandson, A’s grandmother has limits: she feels angry...

...at him for what he’s done ... he knows there’s gotta be a line drawn somewhere, ... that I just can’t keep putting up with rubbish. [A’s grandmother, interview]

C’s father claims he and C are “father, son, but mates as well” (interview), yet with clear discipline:

I’ve always maintained I’ve been fully in control of my boys [C’s father, interview]

This is evidenced by his response to C's offence:

I took his pushbike off him ... He was grounded for six months – no phone, no mates ... Even now he has a 10pm curfew. [C's father, conference]

This reaction appeared to have a strong impact on C, whose sensitivity to his father's esteem may have been heightened by family factors. Such stressors as C's father's ongoing serious health problems and the physical absence of C's and D's mothers, correlate with risk-taking behaviour (Loeber & Stouthamer-Loeber, 1986; Steinberg, 1987; Laub & Sampson, 1988; Resnick et al. 1993; Resnick et al. 1997). C's vulnerability is intimated, moreover, by his father:

[C's] a pretty emotional boy... hard on the outside and soft on the inside. [C's father, interview]

D was also punished by his father, who sold his motorbike and “made him open a bank account to save the money” (D's father, interview). It appeared that the immediate disciplinary responses of these fathers were based on established patterns of interaction and ways of enforcing behavioural expectations. Whether boys respond more compliantly to paternal discipline, than to a grandparent's, is unclear. Nevertheless, the fathers of C and D seemed able to more effectively control their sons' behaviour, while A's grandmother saw no option but for A to leave. Her words are telling:

I feel very isolated with [A] ... [he] needs someone stronger. [Interview]

7.4.2 Internalising boundaries

The development of internal controls, the key to lasting behavioural change, involves the young person,

...thinking through the consequences of their actions, developing empathy with victims [then] thinking before acting. [F's lawyer, interview]

While this may not be observable in the conference (Morris, 2002, p.168), post-conference compliance with agreements is an early indicator.

Attitudinal shifts also suggest the internalisation of norms, as A, D and E's supports verified. Considering he has been already asked to leave his grandmother's house once, and feels unwelcome at his father's, A's interests in accommodating his grandmother's expectations are manifest, as he seems to acknowledge. Finding himself a job and engaging with a literacy and numeracy program demonstrates confidence and his

ability to self-resource and self-start, and to self-maintain. [A's youth worker, interview]

As his grandmother reflects:

...him facing up to it — that was a good step forward¹⁹⁸. [A's grandmother, interview]

This perhaps signalled A's 'getting the message', compared to the pre-conference situation marked by his grandmother's despair:

I'd get to the stage, twelve months ago, when I had to lock the front door and lock the back door and take the key into my room with me — he'd get out the window... [A's grandmother, interview]

Her attempts at control appear to have been outweighed by the influence of other factors in A's life — “no support from his Dad” (grandmother, interview), disrupted parental relationships, his father's criminality, and his mother's violent death — inflaming delinquent tendencies (Loeber & Stouthamer-Loeber, 1986; Cernovich & Giordano, 1987; Steinberg, 1987; Laub & Sampson, 1988; Sarantakos, 1997). Moreover, these factors represent a lack of “external containment” forces (Reckless, 1961), including a consistent moral front, effective discipline, and a sense of belongingness (in Vold & Bernard, 1986, p.237). A's grandmother hints at these problems:

¹⁹⁸ This quote is the source of this chapter's title.

He lets things stew inside him for so long and then he just abrupts (*sic.*), bursts, you know....All of his friends that he associates with, you know, have mothers and fathers ... There are issues that still hurt him – the way he felt when his father remarried... [A's grandmother, interview]

It emerges that the support of caring others is conducive to the internalisation of and adherence to social norms, as B's police officer observes:

Low self esteem comes from not being wanted ... Self esteem is the only way to have self discipline. [B's conference]

7.4.3 Connectedness, support and the functioning family

The key, then, to activating self-control is 'being wanted', highlighting the significance of 'connectedness' for young people's resilience (Resnick et al. 1993; Resnick et al. 1997). This can be extended to families' resilience and the effectiveness of their functioning in the conference process:

The more switched on, more supportive parents will follow through afterwards and do a good job in helping the kid. [F's lawyer, interview]

Clearly, in light of B's experience, this conception of 'family' exceeds the limits of kin relationships. The vital aspect of supports' role in the conference emerges as their efficacy: providing clearly (albeit tacitly) expressed physical, emotional and moral supervision, security, care and guidance. This shapes their ability to function as effective 'key persons', to monitor and influence behaviour, to re-engage their young person and thus foster reintegration. Ironically, B's supports appeared more effective in this role than G's, despite being non-relatives. The supports' efficacy also reflects the convenor's pre-conference preparation in establishing the young person's direction and the extent of their support network (F's lawyer, interview; also, Maxwell & Morris, 1994, p.23).

The supports also played a part in publicly affirming moral boundaries, as E's mother hints, describing their role as:

For [E] to listen to how we felt and express our feelings in front of other people ... who were involved. [E's mother, interview]

This can be empowering, when:

...the family want to show the victim, you know, "my child doesn't come from a family of criminals, we are not encouraging him or her to do it ... we don't see this as acceptable" ... [this] helps a family to heal. [Convenor, focus group]

A's youth worker, for example, observed a significant transformation:

...from a situation where undoubtedly neither [his aunt nor grandmother] had any pride in him at all, at one stage, I certainly would've been proud of [A] if he were my nephew or grandson. [Interview]

The feeling of pride highlights a connectedness between the young person and their supports; it also engenders restorative conditions through a sense of resolution for the families, as discussed (at 7.2.4).

7.4.4 Having the guts

Thus respect for the young person arises out of their participation in a difficult and shaming process. Though not necessarily explicit (Weijers, 2002, p.151),

if you think of a young person, seventeen or younger, surrounded by all of these adults saying you did this, you made me feel like this ... it's everybody saying you know, you did this, so it's definitely shaming. [Convenor, focus group]

The purpose of this punishing ordeal (Daly, 1999, p.10; Walgrave, 1999, p.187; Barton, 2000, p.1, 21) is "moral reparation" (Weijers, 2002, p.143), making up for the harm done. The significance of this achievement is imputed:

...the Dad said 'look I never thought he'd go through with this ... I wouldn't have had the guts to come here today. I would rather just have said I'll accept the tougher penalty'. [Police officer, focus group]

The pride families expressed¹⁹⁹ in their young people 'facing up' to their responsibility, corresponds with their views on whether conferencing is a 'soft option': none thought it easy for young people, except insofar as it was easy to understand (C's father, interview). All agreed the process is worthwhile; even C volunteered:

They're a good idea, these meetings. [C, interview]

The experience again emerges as empowering for families, as A's youth worker suggests:

There was a sense that the process — not just the process of this conference, but the whole process of [A] going off the rails and dealing with it — had been a very powerful and valuable process for the family. [Youth worker, interview]

This recalls Christie's (1977) idea of conflicts being 'useful' for those involved.

7.5 Conclusion

For the young people, besides G, the experience of shame and remorse in the mutually respectful setting of the conference appears to function as deterrent and rehabilitative stimuli, respectively. Empathy emerges as the impeller; respect and support, the footing. Hearing of the damage, anger, fear and distress that their behaviour has caused, and imagining themselves or their loved ones in that situation (Cooley, 1902; Mead, 1934; Becker, 1973), seemingly motivates the boys' determination not to hurt people in the same way again (Tomkins, 1962, in O'Connell et al. 1999; Katz, 2002). By empowering the family and supports around them (Anglicare, 2002), the

¹⁹⁹ Pride in their boys was expressed by A's grandmother, C's father and E's mother (in interviews), and by F's mother (in F's conference).

interactive restorative process thus triggers the young people's 'growing out of crime' through making them accountable for the consequences of their actions, confirming Hayes' and Daly's finding (2003a, p21-2). The conference, as 'moral dialogue', thus becomes a pedagogical mechanism (Christie, 1977; Walgrave, 2002; Weijers, 2002), a learning experience for all involved.

CHAPTER EIGHT

Re-Engaging Families — Drawing Conclusions

Success is relative: It is what we can make of the mess we have made of things... (T. S. Eliot, 1939)²⁰⁰

8.0 Introduction

Eliot's line evokes a recurrent theme in this thesis: the construction of 'success', relative to the construer's perspective on the conferencing process. This motif surfaces throughout this concluding chapter which — in revisiting the questions at the heart of the research — shows a yield of useful results. Moreover, notwithstanding the small scale of the study, the stories that emerge are compelling. Most importantly, the central question is resolved: the findings confirm that offenders' family support impinges on group conferences and their outcomes in significant ways. Subsequent answers to the ancillary questions elucidate these. The characteristics of effective support are identified as are factors contributing to successful outcomes, including compliance with conference undertakings and desistence from immediate reoffending. Divergent outcomes are also explained.

A key finding of the research hinges on the significance of the exercise of power and agency by conference participants, within the context of the conferencing program, in shaping the process and its outcomes. Mapping the ebb and flow of influence and control provides a template for understanding more about conference dynamics. Notions of trust, respect and reciprocity, for instance, are shown to be essential for the implicit shaming aspects of the conference to lead towards offender reintegration. Conclusions are drawn about the key ingredients in this reintegrative process. This chapter, lastly, highlights the study's strengths and limitations, and makes suggestions for future research.

²⁰⁰ T.S. Eliot (1939) *The Family Reunion*, part 2, scene 3, in E. Knowles (ed.) (1999), *The Oxford Dictionary of Quotations*, Oxford University Press, Oxford, p.293.

8.1 Revisiting the research questions

8.1.1. How does offenders' family support impinge upon group conferences and their outcomes?

The results show that the support of trusted, caring and committed adults — ‘family’, in its various permutations — is critical for a young person’s engagement in the conference. The support of kin, however, even two loving parents, does not necessarily guarantee a positive outcome. As G’s conference illustrates, parents are capable (albeit unwittingly) of hijacking the process and — by expressing, implicitly or overtly, their needs and expectations — jeopardising the convenor’s neutral mediating role. Under such circumstances, power imbalance weighs against the young person to constrain their agency and participation in the process. Accordingly, the likelihood of a completed outcome plan, or the conference’s potential rehabilitative and deterrent effects being realised, is compromised. The conclusions that follow expand on the function and significance of ‘family’ in a conferencing context.

8.1.2. What role does the offender’s family play during and after the conference?

It is clear from the findings that the support of caring others has a significant bearing on the young people’s experience of the conference. ‘Family’, in the context of the study, describes individuals with whom the young people share trust, a sense of connectedness, and by whom they feel supported. This includes parents, immediate and extended family, caregivers and friends. Their practical role during the conference involves supporting the young person physically — “we were on each side of him” (E’s mother), and emotionally, “in case he got overwhelmed” (D’s father). Their presence gives the young person a sense of safety and confidence to confront the impact of their offence, particularly when facing victims. This equates to Griffiths’ (1970) and Braithwaite’s (1989) ‘continuum of love’.

Part of the family's role — as those whose opinions the young person values — is to articulate their feelings about the offence and its impact, in front of others similarly affected. This is multifaceted. It involves disapproval of the offending behaviour, but not of the offender, as posited by Braithwaite (1989) and observed by Harris and Burton (1998). It entails disclosure of the family's sense of guilt and shame (Prichard, 2002), which is shown to elicit the young person's empathy and subsequent remorse, supporting Morris's (2001) conclusion. Furthermore, the family's expression of empathy with victims reinforces the young person's obligation to 'make things right' (Zehr, 1990, in Van Ness, 1993, p.259), thus serving as a gesture towards repairing the harm caused by their young person's actions.

Clearly, the supportive role of family is symbolic as well as practical. This includes bearing witness to their young person's engagement in the reparative process, to raise their 'stakes in conformity' (Toby, 1957). The findings indicate, moreover, that the supportive role is gendered: the steadfast support and love expressed by female family members contrasts with the discipline-focused presence of fathers. While the small sample limits the extent to which conclusions may be drawn from this finding, it highlights a shared feature in the young men's experience of family dynamics.

8.1.3. To what extent does the "success" of the conference hinge on the family dynamics, behaviour, background, and support of the offender?

Effective support is critical to conference 'success', as comparative analysis of two conferences demonstrates. Evidently, effective support is characterised by three key elements: disapproval of the offending behaviour; a pledge of ongoing support (physical, moral and emotional); and clear behavioural expectations and moral boundaries (Griffiths, 1970; Becker, 1973). Significantly, the blood-relatedness of this support does not correlate with its efficacy. B's conference shows its provision by individuals other than family. Despite B's immediate family's dysfunction and non-presence in his life, he is assisted and encouraged to make amends for and address the causes of his

offending behaviour by women to whose trust and commitment he subscribes. In this way, they function as his family.

An atmosphere of mutual respect and listening is essential for each participant in the conference to actively engage in information-sharing and decision-making (Walgrave, 2002; Salomone, 2003). The family's contribution to this environment emerges as crucial. As G's experience testifies, the support role is compromised when demands on the young person — to make amends and modify behaviour — exceed his²⁰¹ capacity to meet them. This is shown to occur when messages of harm caused by the offence are diverse and conflicting. This signals a lapse in the group hearing and heeding one another. It also indicates the family's failure to protect the interests and well-being of their young person in the conference. The implications for the success of the reparative process are manifest: the persistence of guilt and shame, in the face of the young person's inability to meet the demands of the group, militates against the possibility of restoration.

The data confirm that ineffective support impedes a young person's confidence and agency in the decision-making process. As G's conference illustrates, parents' expectations and anxiety to satisfy victims' needs contribute to a power imbalance weighed in the victims' favour. G's parents' effusive empathy with the victims, for example, is alienating rather than engaging. Such interactions carry echoes of habitual patterns of behaviour and communication. G's apparent lack of affective response to his parents crying, for instance, hints at an emotional immunity arising from well-worn conflicts characterising family relations.

The findings reveal a link between the convenor's skills and experience and a family's motivation and capacity to support their young person in the conference. Much of the convenor's work is in engaging and empowering the family prior to the meeting, clarifying their support role and canvassing possible outcomes (Maxwell and Morris, 1994, p.23). The implications of inadequate preparation surface when family interactions cause a shift in the

²⁰¹ The masculine pronoun is used since the young people in this study were all male.

distribution of power, against the young person (as in G's case). The resulting impairment of trust, and blurring of expectations, undermines the efficacy of the support role. Here, the convenor's mediating function becomes critical, to maintain a focus on realistic and achievable ways of making amends. Considering warnings about the risks of shaming (Braithwaite, 1989; White, 1994; Prichard, 2002) and its potential to jeopardise conference success, the importance of comprehensive convenor training is manifest.

8.1.4. How is a conference's "success" defined in relation to the family of the offender?

The data suggest that outcomes deemed successful by the young people and their families contribute to the reintegrative process. If a conference fails to meet the needs of its participants, this is likely to have a disintegrative effect, potentially manifesting as further offending. 'Success', for young people's supports, is not defined simply in terms of reoffending, however. As Griffiths points out, "a successful conference will most likely result in diversion ... from a Supervisory Order" (1999, p.4). For some families this is both incentive to participate and a clear indication that the conference is a success: their boy is given a second chance and avoids a conviction. More expressly, though, success comprises the boys "facing up to it" (A's grandmother), thinking about the consequences of their actions, learning a lesson, having to make amends, and listening to everybody's views. As E's father reflects, "everyone got something off their chests". The significance of a sense of resolution, which the conference affords its participants, is clear; they can 'move on' from the incident which brought them together. In addition, families' expression of pride in their young people, for participating in a confronting and often punishing process, is testament to their boys' accomplishment and their perception of 'success'.

8.1.5. How does the notion of "reintegrative shaming" (Braithwaite, 1989) relate to the offender's family?

The findings show conferences to be imbued with an element of shame,

confirming Prichard's (2002) observations. Notwithstanding Anglicare's rejection of shaming as a deliberate strategy, shame manifests as the young person feeling shown up for their behaviour, alarmed by its consequences, and disgraced for what they have done. This is intensified by the group's disapproval of the offence, voiced as shock, outrage and disappointment. When a young person's supporter expresses their guilt and shame — implicitly or overtly — it adds to the disapproving voices, yet also means the young person is not alone in their shame. The reintegrative element is the sustained support of the offender, alongside disapproval of their offence (Griffiths, 1970; Braithwaite, 1989).

This process is contingent on a specific environment (Braithwaite, 1989; Braithwaite & Mugford, 1994). According to the data, this comprises family members' disclosure of their shame, which underscores the young person's breach of trust. Significantly, though, it also acknowledges their capacity to restore trust. The young person is thus granted agency in the reparative process (Hogg & Brown, 1985); their deviance is 'decertified' (Braithwaite, 1989); they are given a second chance. This emerges as the basis of reintegration, of families re-engaging with their young people.

Prichard (2002) suggests that young people's self-esteem may be further damaged by their parents' shame. Yet the findings of the present study suggest, conversely, that parents' shame elicits young people's remorse, via empathy (Morris, 2001). It emerges, however, that shaming conditions can only be integrative insofar as they elicit genuine remorse. Without a degree of empathic exchange, the shaming is likely to be alienating for the young person and thus disintegrative in terms of potential social inclusion; stigmatising in Braithwaite's (1989) *lexis*. G's conference attests to the obstruction of empathy by power imbalance, excessive demands and conflicting messages. These impediments undermine the young person's commitment to the reparative process and the "reciprocity of action and responsibility" (Salomone, 2003, p.7) required for reintegration to occur.

8.1.6. How and when, if at all, does 'reintegration' of the offender take place?

Clearly, reintegration begins in the conferencing process, including its preparatory phases. Indeed, a defining aspect of the Anglicare model is that pre-conference work comprises an intervention in itself²⁰². Identifying and strengthening a young person's social support network sows the seeds of reintegration. The conference process operates to consolidate changes made since the offence, such as 'A' engaging with an education program, or 'B' finding a home and a job, by reinforcing such connections.

Conceivably, some of these young men could embark on the path to reintegration without conferencing. It is difficult to judge the extent to which the referral process self-selects cases destined to 'succeed'. What emerges in the findings, however, is that the conference serves to confirm, validate and reward the young person's efforts towards making amends and taking responsibility for their actions. By engendering a sense of participation and engagement in a mutual, constructive process — with “the offering of necessary supports and opportunities” (Salomone, 2003, p.7) — the reintegrative process is initiated.

The conference functions as a catalyst, as Hayes and Daly (2003a) conclude. Through empathy, a young person's view of themselves in relation to others is shifted, albeit imperceptibly. This implies their accepting, as valid and reasonable, the group's disapproval (representing the wider community's) and its underlying moral boundaries (Griffiths, 1970; Becker, 1973). Clear signs emerge: B's handshake; E's affirmation, “I will never do it again”; completed undertakings and desistence from offending are further indications. Yet the transformation in perception, and hence behaviour, may be more subtle; a gradual dawning, an inevitable growing up — and out of crime (Rutherford, 1986, in O'Connor & Chui, 2002; Vold & Bernard, 1986; Coumarelos, 1994, in Weatherburn, 2001; Cain, 1996, in Buttrum, 1997).

²⁰² As a convenor explained in her interview, 20/8/03.

8.1.7. How does family support impinge upon this process of reintegration?

Restoring trust emerges as a crucial aspect of reintegration. As a convenor suggests, young people feel:

...loss in terms of trustworthiness ... maybe gaining that trust back is reintegration. [Convenor, focus group]

Evidently, effective family support enables the young person to rebuild trust through their expression of empathy and genuine remorse (tacit or otherwise). Trust begins with mutual respect. This evokes Braithwaite's (1989) communitarianism — interdependent social relations built on shared obligation and trust; his reference to the “symbolic significance” (p.100) of such connections accords with the depiction of the symbolic aspects of the conference. Reintegration thus relates to “the playing of roles” in the conference (lawyer, interview), manifest in its interactional dynamics and the exchange of power and influence.

The data confirm the relationship between family support and young people's engagement in the restorative process. Their active participation prefigures their reintegration into the community (McCold, 1996; Salomone, 2003). By collectively engaging in the conference process, the community — including ‘family’— emerges as a source of support and opportunity for young people's meaningful participation and, thus, a locus of crime control (Marshall, 1995, in Belgrave, 1996; Retzinger & Scheff, 1996; Barton, 2000; Salomone, 2003).

8.2 Strengths and limitations

The strength of this study lies in its detailed description of the conference process. This derives from its qualitative mode of enquiry, focused on quality — the characteristic elements and dynamic structure of conferences — rather than on quantity. Such a focus allowed the in-depth exploration and vivid

depiction of the experience of conferencing for young people and their supportive others.

Research to date has focused on participants' perceptions of fairness, victim satisfaction, and recidivism as measures of conference 'success' (Markiewicz, 1997a; Daly & Hayes, 2001). It is shown, however, that these measures are limited in their capacity to reveal much about what actually happens in conferences. This research shows observation to be a generous and substantial source of empirical material. The researcher as the research instrument provides immediacy and has the capacity to capture context, subtlety and nuance (Lincoln and Guba, 1985). The value of observation as a data-gathering method is illustrated in the 'power maps' (figures 6.4 to 6.7). These serve as exemplars representing vital elements of the conference process: the power differential, and how it varies. These diagrammatic portrayals of the interactive process provide a model for developing insight into how conferences work. Their predictive capacity broadens their theoretical and practical applicability and enhances, moreover, their utility as a training aid²⁰³.

A significant contribution of the study is the record of participants' views of conferencing. 'Success' varies according to the context and perspective from which it is construed. Considering the key role of families in supporting their young people in the restorative and reintegrative process, their conceptions of whether and how the conference 'works' emerge as vitally important. The sample of seven cases is neither representative nor random; nor is it intended to be. The in-depth study of a few cases provides rich empirical material, possibly beyond the reach of larger-scale studies (for example, Moore, 1996; Wundersitz, 1996, in Markiewicz, 1997a). Triangulation of data-collection methods and sources supports the validity of the findings and the reliability of their interpretation.

The research is anchored, moreover, by its abductive strategy: 'letting the data speak' (Crotty, 1998); allowing the voices of participants to be heard. While, as

²⁰³ For instance, convenor training could use power maps to represent hypothetical scenarios.

Hil and McMahon (2001) concede,

the voices of those involved are heard, they are often heard in fragmented and disjointed ways ... [as] grab-bites of significance (p.65).

This has implications for the presentation and interpretation of data. Recognising that qualitative study is inevitably constrained and coloured by the researcher's presence, care has been taken to convey participants' authentic voices, in deference to their subjective truth and experience.

It is acknowledged that the sampling strategy and the availability of data sources were constrained by the scope of the program and access issues. As Delamont (1992, p.79) warns, access negotiations can take enormous amounts of time and effort: establishing the personal, academic and professional credentials of the researcher, and building rapport with agency staff. Gaining access to subjects requires resourcefulness, flexibility, patience and persistence. Much is learnt along the way as efforts are frequently thwarted. Some impediments to this research were anticipated, such as the limited availability of conferences. Yet unforeseen issues arose: the inevitable waning over time of young people's enthusiasm to engage with an inquisitive researcher, for instance; and the significance of collaborative relationships with agency personnel.

Convenors were relied upon to communicate the aims and requirements of the research, and to gauge the willingness of young people and their supports to participate in the study. This involved emphasising – to the young people in particular – anonymity, voluntary participation, and the unique opportunity to express their views about conferencing. Early attempts at securing access to participants proved ineffectual, however, highlighting the importance of continual liaison and reviewing cooperative strategies with convenors. Program staff's working priorities are naturally geared towards meeting clients' needs and agency imperatives – exigencies to which research commitments are secondary.

8.3 Future research

Several issues in this study merit further consideration: families' and young people's decisions not to participate in the research, for instance. This raises questions about ways of capturing such empirical material and how to engage and persuade young people, in particular, to tell their stories. Further dialogue with conference participants — B and his supports, and G and his parents, especially — would provide valuable insight into their experiences.

A longitudinal study focused on the reported experience and reflections of young offenders and their families may allow appreciation of conferences' enduring effects. Perhaps the key is for qualitative research mechanisms to be built into restorative processes — observational instruments recording characteristics of conferences, their precursive and follow-up phases — to monitor their ramifications, including the reintegrative process and its manifestation within family and social networks. Cross-jurisdictional comparative analysis of programs would provide a useful context within which to examine the implications of different conferencing models for young people and their families.

Furthermore, the exercise of power and agency by conference participants deserves intensive scrutiny. Knowledge of these interactional undercurrents and their corollary effects is needed to more fully understand conference processes and their outcomes. Creating power maps of various dimensions may prove constructive in the future: a larger-scale mapping of conference power dynamics, for instance, to ground theory on the subject; and developing hypothetical models to complement practice-based convenor training.

8.4 Conclusion

This study set out to explore the experience of conferencing for young people, their family and supportive others. It concludes that effective support is a critical element of a successful conference. "Communities of influence and care" (Barton, 2000, p.1), including family, comprise the source of this

support, and provide the context for offending behaviour and its solution. The notion of restoration derives from recognition of this social context. Therefore, as Maxwell and Morris (1998, p.11) suggest, conferences need to be conceived in terms of “restorative processes not restorative outcomes”. The assumption is that ensuring the former will secure the latter.

If efforts are to be made to engage — or re-engage — families in meaningful relationships with their young people, with the aim of reducing offending, it befits those concerned to know how the process works. In light of the shortcomings of a purely quantitative analysis, sustained qualitative enquiry emerges as the sole means of fulfilling this task. As Hayes and Daly (2003a, p.22) suggest, despite calls for large-scale comparative studies,

we may learn more by focusing attention on how young offenders describe what happens in their conferences and how conferences affect them, as well as their behaviour.

Though young people’s actions often speak louder than their words, a restorative remedy obliges respectful listening. Thus may Christie’s (1977) ‘pedagogical possibilities’ be realised.

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Appendices:

1. Conferencing in Australia — Jurisdictional Differences and Program Variation
2. The Evolution of Conferencing in Victoria
3. The Victorian Model of Conferencing — The Conference Process; Referral and Assessment Procedures
4. Ethics approval
5. Plain Language Statement #1 — Young Person
6. Plain Language Statement #2 — Family Member
7. Plain Language Statement #3 — ‘Significant Other’ (eg. youth worker)
8. Plain Language Statement #4 — Conference Convenor
9. Consent Form (for observation and interviews)
10. Interview Schedule — Young Person
11. Interview Schedule — Family Member
12. Focus Group Invitation — sample
13. Focus Group Consent Form
14. Focus Group Agenda
15. Focus Group Questions
16. Typical Conference Agenda
17. Convenor’s Introduction — sample

Appendix 1:

Conferencing in Australia —
Jurisdictional Differences and Program Variation

Conferencing in Australia — Jurisdictional Differences and Program Variation

In the year that New Zealand's landmark legislation was enacted, across the Tasman Sea an Australian academic, John Braithwaite, published *Crime, Shame and Reintegration* (1989), in which he espoused the theory of 'reintegrative shaming'. Subsequently, inspired by Braithwaite's ideas and drawing on the New Zealand experience, a group of New South Wales police in the town of Wagga Wagga in 1991 introduced, as part of a youth diversion scheme, a conferencing strategy based on the theory of reintegrative shaming (Moore & O'Connell, 1994, 46-56). This was the first restorative justice program to be implemented in Australia. The 'Wagga model' is unique in that it is facilitated by police (Markiewicz, 1997a, p.15). Subsequent programs in other states favour non-police run models, though are similarly aimed at diverting (chiefly) young offenders from court processes (Daly & Hayes, 2001, p.2). Conferencing programs have statutory footing in all jurisdictions except the Australian Capital Territory and Victoria (Daly & Hayes, 2001, p.3).

In the ACT, Australian Federal Police use the Wagga model as a means of diverting adult offenders from court through police referral to conferences, of which there are over 200 convened each year. In New South Wales, police trials of the Wagga model — known as the Police Cautioning Scheme — were run between 1991 and 1994, after which Community Youth Conferencing (under the Attorney General's department) employed Community Justice Centre mediators; in 1997 the introduction of the *Young Offenders Act* saw the transfer of the program to the Department of Juvenile Justice. Offenders are referred to conferences either by police as a diversionary mechanism or by courts as a sentencing option; over 2000 cases were conferenced in a twelve month period in 1999-2000. Conferencing is used throughout the Northern Territory in a dual mode: a 'post-court' program is run by Community Corrections for repeat juvenile property offenders (aged 15-17); a police-run model diverts young offenders (aged 10-17) from court (Condliffe, 1998, p.143-4; Daly, 2000a, p.2; Daly and Hayes, 2001, p.3; Markiewicz, 1997a, p.15;).

In Queensland, since 1995, various models have been trialled: Wagga style diversionary conferences; pre- and post-sentence victim offender mediation; and Community Accountability Conferencing in a schools context. Youth Justice Conferencing commenced in South-East Queensland in 1997 after amendments to the *Juvenile Justice Act 1992*. In 1998 the Department of Families, Youth and Community Care took charge of the program, which takes diversionary, indefinite* and pre-sentence referrals; 522 were conferenced in the year 2002/2003. Since 2002 the program has been expanding across the state. South Australia, as well as using conferencing to decide child care and protection matters, has the most well-established state-wide program of Family Group Conferencing to divert young offenders from court. Over 1500 conferences are convened each year; over a four year period seventeen percent of cases were referred to conference (Daly, 2000a, p.2).

In Tasmania, police conferences were run without statutory provision between 1994 and 1999; after the *Youth Justice Act 1997* was proclaimed in 2000, the program shifted to the Department of Health and Human Services and has since been facilitated by non-police, taking police and court referrals. Western Australia's *Young Offenders Act 1994* provides for police and court referred conferencing primarily as a means of diverting juveniles from court. Current projects include both Reparative and Protective Victim-Offender Mediation (for adult and juvenile offenders) and a court conferencing program operated by Juvenile Justice Teams at the Perth Children's Court, to which an average of 2800 young offenders were referred annually between 1995 and 1999 (Condliffe, 1998, p.143-4; Daly, 2000a, p.2; Daly and Hayes, 2001, p.3; Markiewicz, 1997a, p.15; Queensland Government, Department of Communities, 2004; Government of Western Australia, Department of Justice, 1999, 2003).

* An 'indefinite referral' to a conference may be made by a court as an alternative to sentencing (Queensland Government, Department of Communities, 2004)

Appendix 2:

The Evolution of Conferencing in Victoria

The Evolution of Conferencing in Victoria

The earliest plans for a victim-offender reconciliation strategy in Victoria were realised in 1992 with the introduction of the Victim Offender Mediation Program (VOMP), a joint initiative of the Ministry of Police and Emergency Services and the Dispute Settlement Centre (DSC) Project. A diversionary model of victim-centred community mediation, VOMP was implemented as a six-month pilot project at Frankston and Geelong Dispute Settlement Centres[†], targeting young offenders who had already received at least one police caution and who faced the prospect of being charged for a new offence (to which they had admitted). The pilot program employed trained mediators, and referrals were made directly by police (Kadar, 1992; VLRC, 1996, s.6.14, 6.33, 6.67-70). The only evaluation data available on the program indicated that referrals were far fewer than expected, and suggested an “uneasy relationship between the mediation program and the Police Cautioning Program” (VLRC, 1996, s.6.68). Further concerns were noted around issues such as equity for offenders, disproportionate outcomes, and compliance with agreements (s.6.69).

In 1992, an additional victim-offender mediation project was launched by the Northern Suburbs Dispute Settlement Centre, in Preston[‡] (Fisher et al. 1992; Fisher, 1993, p.125). The lack of any reference to this program in other literature, however, suggests that it was short-lived. A further trial, the Broadmeadows Pilot Project, ran from January 1994 until December 1995. This project, based at the Broadmeadows Magistrates’ Court, was designed by the Victorian Correctional Services Division of the Department of Justice as a pre-sentence model, targeting property offences and minor assaults by offenders of any age or criminal history, following an admission of guilt or a conviction. Mediated agreements could either be incorporated into sentences or monitored by the courts (VLRC, 1996, s.6.35). This project mediated only thirteen cases (Markiewicz, 1997a, p.27).

[†] In 1992 there were seven Dispute Settlement Centres operating in Victoria, aimed at helping people settle their conflicts (such as family, neighbourhood or workplace disputes) cooperatively (Kadar, 1992, p.429). Frankston is an outer metropolitan centre; Geelong is a regional city, one hour from Melbourne.

[‡] Preston is an inner northern suburb of Melbourne.

Appendix 3:

The Victorian Model of Conferencing —
The Conference Process

The Victorian Model of Conferencing — The Conference Process

The Victorian model of conferencing shares with New Zealand's the following processual characteristics: during an initial information sharing stage, participants are invited to share with the group their experience of the criminal incident which has brought them together; after the police informant's account of the offence, the offender relates their version of the events, followed by each individual's telling of the impact of the crime on them. In emphasising the importance of family involvement in the decision-making and restorative process, each model provides for 'private time', whereby the young person and their supporters withdraw from the group for a period of private discussion and deliberation and to formulate a plan of action, which is then returned to the group for feedback and endorsement. This private meeting may also be attended by the young person's legal advocate, whose presence at the conference is required in the Victorian model, yet optional in New Zealand (Anglicare, 2002; Belgrave, 1996).

Referral and Assessment Procedures

Under the Victorian model cases are only referred to conferencing if they fit within certain limited criteria. Young offenders may be referred who have admitted to and been found guilty of an offence for which they face a supervision order (that is a higher sentencing tariff than a good behaviour bond or a fine). Young people who are currently on supervisory orders from the criminal division of the Children's Court are excluded (Anglicare, 2002, p.13). Furthermore, they must consent to participate in the conferencing process. That is, the young person and their family or other supports must be prepared to meet with the convenor prior to the conference, attend the conference, and agree to return to court following the conference (Anglicare, 2002, p.13).

Referrals are made on the recommendation of legal representatives and

juvenile justice court advisers familiar with an offender's circumstances and able to determine, often in discussion with the clients, whether or not the young person would be a suitable candidate for the program. The convenor usually makes an assessment as to the appropriateness of the referral in consultation with the young person and their support network, prior to the formal referral from the magistrate (Anglicare, 2002, p.3). The purpose of this meeting is to ascertain that the referral criteria are met, informed consent is given, and that the young person and at least one supporter has voluntarily agreed to participate in the conference process (Anglicare, 2002 p.13).

Once it has been judged that a young person "would benefit from a greater awareness of the impact of their offending on victims and the community" (Anglicare, 2002, p.13), suitability is deemed according to a range of factors, such as the young person's family situation and the nature of their social support network; the circumstances surrounding the offence and offending history; the extent to which the young person has accepted responsibility for the offence; and their expressed desire to change their offending behaviour (Anglicare, 2002, p.10). The assessment process entails initially listening to stories about the offence and its impact, the building of trust between the convenor and participants, and the engagement and motivation of the individuals involved.

Furthermore, the convenor needs to ensure that the young person in particular, as well as their lawyer and support network, has realistic expectations of the conference process. Examples of a young person's appropriate expectations are a serious commitment to cease offending and viewing the conference as a path to achieving this; a willingness to meet with victims; the desire to apologise or undertake reparation for the offence; and willingness to actively participate in developing their own outcomes (Anglicare, 2002, p.11).

Once referred to the program, the young person is assigned a conference convenor with whom they meet three or four times prior to the conference (Anglicare, 2002, p.20). These briefings comprise discussion of the factors

surrounding their offending behaviour and how these might be addressed, thus enabling the convenor to “gain a systematic understanding of the young person’s offending and the context of the support network in the young person’s life” (Anglicare, 2002, p.14). The convenor also meets with members of the young person’s support network, comprising immediate or extended family or significant others identified as those to whom the young person feels most connected, such as friends, neighbours, peer group or community professionals (Anglicare, 2002, p.14-5), as well as separately with victims and their support network.

Appendix 4:
Ethics Approval

Appendix 5:

Plain Language Statement #1 —
Young Person

Dear [young person]

This letter is to introduce myself and explain what I'm doing. It is also to invite you to participate in two interviews with me.

First, my name is Diana Johns. I am a student at RMIT University, where I am studying for a Masters degree by Research, in the Department of Justice and Youth Studies. The title of my research is:

*Re-Engaging Families With Their Young People -
A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.*

I have a Supervisor for my study, who is a Lecturer at RMIT. Her name is Marg Liddell (her contact details are included at the end of this letter).

What I'm doing...

My research is looking at the experience of young people and their family in a Group Conference, and how these group meetings actually work. In particular, I am interested to find out about things that influence how the conference works, such as the young person's family and what they think and say and do, or don't do.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745.

Why I'm doing it...

I think Group Conferences can help and benefit young people and their families, crime victims and their families, as well as the wider community. Because conferences are about talking openly about the offence and how it has made everyone feel, about making up for any harm done and coming to agreement together, in a more informal way than in a Court.

But *why* does this help? And *how* can it benefit us? We don't know exactly. There have been other studies on group conferences, but they have not asked enough about what the young person and their family *think* and *feel* about being in a conference, and what happens afterwards. So this is what I want to do.

How I'm doing it...

I will be observing the conference, not to participate, just to see and listen to what goes on. And I would like to interview you soon afterwards, say two or three weeks later, to find out what you thought about the conference. This interview would take about one hour. I would also like to talk to a member or members of your family in a separate interview, and then another person who knows you but who is not in your family (maybe a youth worker or other support person).

The second interview would be about three months later, when I would ring you up for a brief chat over the phone. This would be to see how things are going after the conference.

If you agree, I would like to tape record the interviews, so that I can write down exactly what we talked about later. If you don't feel comfortable being tape recorded, we can do the interview without it. Afterwards, when I have interviewed several different people, I will put all of the information together and use it to understand and describe what happens during and after a conference.

If you don't want to participate, that's fine. You don't have to. If you do decide to participate, then change your mind later, that's OK too. This is completely voluntary, that is, it's up to you. There will be no penalty or discrimination against you if you don't want to be part of my research.

If you do want to participate in the research, I need to tell you that we might be talking about things that could be quite personal and sensitive. Things like your offending and how your family reacts to it, or, how your family supports and helps you when you're in trouble.

If you tell me something in an interview and then later you want to take it back, you can tell me and I won't use that information. Anything we talk about in an interview is confidential, and I will not use your name in the research. No one will be able to identify you or your family in the research. All the interview notes and tapes will be kept in a locked cabinet in my Supervisor's office at RMIT. I am the only person who will have key access to this information.

If you have any questions or concerns about the research, or if you're unsure about anything I have said, please feel free to ask for clarification, at any time. You can contact me by phone, on 5974 2902, or email: dfj@alphalink.com.au.

Thank you for reading this letter. If you do want to participate in the study, there is a 'consent form' attached for you and your parent/s to sign.

Yours sincerely,

Diana Johns.
Master of Arts by Research student,
Department of Justice & Youth Studies,
RMIT University.

My Supervisor's details are:
Marg Liddell,
Lecturer, Criminal Justice Administration,
Department of Justice and Youth Studies,
RMIT Bundoora.
Ph: 9925 7924

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745.

Appendix 6:

Plain Language Statement #2 —
Family Member

Dear [family member]

This letter is to introduce myself and explain what I'm doing. It is also to invite you to participate in two interviews with me.

Firstly, my name is Diana Johns. I am a student at RMIT University, where I am studying for a Masters degree by Research, in the Department of Justice and Youth Studies. The title of my research is:

*Re-Engaging Families With Their Young People -
A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.*

I have a Supervisor for my study, who is a Lecturer at RMIT. Her name is Marg Liddell (her contact details are included at the end of this letter).

What I am doing...

The focus of my research is on the experience of group conferences from the perspective of young people (who have committed offences) and their families, and on how these conferences actually work. In particular, I am interested in exploring the hidden, sometimes unspoken elements that may influence how conferences work, such as how the young person and their family relate and respond to one another.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

Why?

I believe group conferencing can be helpful and beneficial to young people and their families, crime victims and their families, and the wider community. A conference offers an opportunity to discuss and resolve the issues surrounding a young person's offending, to talk openly about the offence and its consequences, to try and repair the harm done, and to make decisions together, in an informal and inclusive setting. Yet it's not clear how the process *actually works*.

Although there has been research on group conferences, little attention has been given to the role of the young person's family in the process. Recognising the importance of the family, my research aims to discover what it feels like for young people and their family to participate in a conference, and the effect of these on what happens after the conference. What makes the conference a "success" for young people? And for their families? I want to try and answer these questions.

How?

I will be observing some conferences, not as a participant, but simply to watch and listen to the proceedings, and note down my observations. And I will be carrying out interviews - of the young people, their family members, and another person, such as a youth worker or support person, who knows the family but is not a member of it.

The first interview would be held soon after the conference, that is, within four weeks. This interview would take about one hour. With your permission, the interview will be tape recorded, to ensure accuracy of information, and to enable me to review and collate the information at a later date. If you would prefer not to have the tape recording, we can do the interview without it. The second interview - a follow up - would take place two to three months later, over the telephone, at a time convenient for you to have a brief chat. Later on, I will be happy for participants to view the summary of the results, if they so wish.

Participation in this research is completely voluntary. You can choose to withdraw at any stage. If you do agree to participate in an interview, then change your mind afterwards, I will not use any of the information you supplied earlier.

If you do want to participate in the interviews, you need to be aware that our discussions may include subjects of quite a personal and sensitive nature. These may include questions about how you have reacted to your young person's offending, in the past and since attending the conference, or, how the different people relate to one another in your family. Of course, you do not have to answer any questions that you do not wish to.

The interviews are completely confidential. I will not use your names in the research, nor will I include anything by which you or your family could be identified. The notes

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

and tapes of all interviews will be stored in a locked cabinet in my Supervisor's office at RMIT. I am the only person who will have key access to this confidential information.

If you have any questions or concerns about the research, or about anything I have said, please feel free to ask me for clarification, at any time. You can contact me by phone, on 5974 2902, or email: dfj@alphalink.com.au.

Thank you for reading this letter. If you do want to participate in this study, there is a 'consent form' attached for you to sign. If your son/daughter/relative (who is under 18) wishes to participate in the research, parental consent and co-signature is required too.

Yours sincerely,

Diana Johns.
Master of Arts by Research student,
Department of Justice & Youth Studies,
RMIT University.

My Supervisor's details are:
Marg Liddell,
Lecturer, Criminal Justice Administration,
Department of Justice & Youth Studies,
RMIT University, Bundoora.
Ph: 9925 7924.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

Appendix 7:

Plain Language Statement #3 —
'Significant Other'

Dear ['significant other', eg. youth worker]

This letter is to introduce myself and explain what I'm doing. It is also to invite you to participate in an interview with me.

Firstly, my name is Diana Johns. I am a student at RMIT University, where I am studying for a Masters degree by Research, in the Department of Justice and Youth Studies. The title of my research is:

*Re-Engaging Families With Their Young People -
A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.*

I have a Supervisor for my study, who is a Lecturer at RMIT. Her name is Marg Liddell (her contact details are provided at the end of this letter).

What I am doing...

The focus of my research is on the experience of group conferences from the perspective of young people (who have committed offences) and their families, and on how these conferences actually work. In particular, I am interested in exploring the hidden, sometimes unspoken elements that may influence how conferences work, such as how the young person and their family relate and respond to one another, and how the family dynamics influence a conference and its outcomes.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

Why?

I believe group conferencing can be helpful and beneficial to young people and their families, crime victims and their families, and the wider community. A conference offers an opportunity to discuss and resolve the issues surrounding a young person's offending, to talk openly about the offence and its consequences, to try and repair the harm done, and to make decisions together, in an informal and inclusive setting. Yet it's not clear how the process *actually works*.

Although there has been research on group conferences, little attention has been given to the role of the young person's family in the process. Recognising the importance of the family, my research aims to discover what it feels like for young people and their family to participate in a conference, and the effect of these perceptions on the conference outcomes. What makes the conference a "success" for young people? And for their families? I want to try and answer these questions.

How?

I will be observing some conferences, not as a participant, but simply to watch and listen to the proceedings, and note down my observations. And I will be carrying out interviews with the young people, their family members, and another person - you - the 'significant other' who knows the family but is not a member of it.

The interview in which I am inviting you to participate would be held soon after the conference, that is, within four weeks. (A second, follow-up interview will take place four to six months later, but this will only involve the young person and their family members.) The interview will take about one hour. With your permission, the interview will be tape recorded, to ensure accuracy of information, and to enable me to review and collate the information at a later date. However, we can do the interview without taping it, if you would prefer. I will be happy for participants to view the summary of the results, if you so wish.

Participation in this research is completely voluntary. You can choose to withdraw your consent to participate at any stage. If you do agree to participate in an interview, then change your mind afterwards, I will not use any of the information you supplied earlier.

Participation in the interview will involve the discussion of details surrounding your knowledge of the young person and their family, how they relate to one another, their responses to the offending behaviour, in the past and since attending the conference, and so on. Of course you are not obliged to answer any questions you do not wish to.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

The interview will be completely confidential. I will not use real names in the research, nor will I include anything by which you, the young person or their family could be identified. The notes and tapes of all interviews will be stored in a locked cabinet in my Supervisor's office at RMIT. I am the only person who will have key access to this confidential information.

If you have any questions or concerns about the research, or about anything I have said, please feel free to ask me for clarification, at any time. You can contact me by phone, on 5974 2902, or email: dfj@alphalink.com.au.

Thank you for reading this letter. If you do wish to participate in this study, there is a 'consent form' attached for you to sign.

Yours sincerely,

Diana Johns.
Master of Arts by Research student,
Department of Justice & Youth Studies,
RMIT University.

My Supervisor's details are:
Marg Liddell,
Lecturer, Criminal Justice Administration,
Department of Justice & Youth Studies,
RMIT Bundoora.
Ph: 9925 7924.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

Appendix 8:

Plain Language Statement #4 —
Conference Convenor

Dear [conference convenor]

This letter is to introduce myself and briefly describe my research and its aims. It is also to **invite you to participate in a series of interviews**, *prior to* and *three months after* each conference of which I am an observer.

As you are aware, I am currently studying for a Masters degree by Research at RMIT, in the Department of Justice and Youth Studies. The title of my research is:

*Re-Engaging Families With Their Young People -
A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.*

My Primary Supervisor is Marg Liddell, a Lecturer at RMIT (her contact details are supplied at the end of this letter).

What I am doing...

The focus of my research is on the experience of group conferences from the perspective of young people (offenders) and their families. In particular, I am interested in exploring the hidden, tacit, and often intangible elements that

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

may influence how conferences work, such as how the young person and their family relate and respond to one another, and how these family dynamics impinge upon the conference process and its outcomes.

Why?

Empirical data on conferencing is limited, and has not provided much insight into how conferences actually work. Although the family is pivotal in the conferencing process, its role has remained largely implicit in the research to date. The aim of this study is to explore this crucial element, by gathering in-depth qualitative data about participants' experiences and perceptions during and after a conference. In describing the relationship between the family of young people participating in conferences, and the group conferencing process and its outcomes, this research also aims to generate theory from the 'ground up', which will help in the development of new models of practice.

How?

By observing conferences and interviewing their participants, I hope to develop a detailed and rounded picture of the conference process and the role of the young person's family in it.

I invite you to participate in **an interview prior to each conference**, for the purposes of establishing the facts of the case and providing some background information about the young person, their offending behaviour, and their family background and circumstances. This information will serve to contextualise my observations of the group conference. I would envisage this interview might take about thirty minutes. With your permission, the interview will be tape recorded, to ensure accuracy and to enable me to review and collate the information at a later date.

I would like to conduct **a second interview at the end of the three month follow-up period** after each conference. This would be to record your assessment of the young person and their family's progress since the conference, and whether any changes have been noted, in the way they relate to one another, or in offending behaviour, for example. This interview could take up to forty five minutes.

Participation in these interviews is completely voluntary. Consent to participate may be withdrawn at any stage. The interviews will be completely confidential. I will not use clients' real names in the research, nor will I include anything by which a young person or their family could be identified.

The notes and tapes of all interviews will be stored in a locked cabinet in my Supervisor's office at RMIT. I am the only person who will have key access to this confidential information.

If you have any questions or concerns about the research, please feel free to ask me for clarification, at any time. You can contact me by phone, on 5974 2902, or email: dfj@alphalink.com.au.

Attached is a Consent Form for you to sign, if you agree to participate in the study.

Thank you.

Yours sincerely,

Diana Johns.
Master of Arts by Research student,
Department of Justice & Youth Studies,
RMIT University.

My Supervisor's details are:
Marg Liddell,
Lecturer, Criminal Justice Administration,
Department of Justice & Youth Studies,
RMIT Bundoora.
Ph: 9925 7924.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745).

Appendix 9:

Consent Form

(for observation and interviews)

RMIT HUMAN RESEARCH ETHICS COMMITTEE

**Prescribed Consent Form For Persons Participating In Research Projects Involving
Interviews, Questionnaires or Disclosure of Personal Information**

FACULTY OF	Education, Language and Community Services
DEPARTMENT OF	Justice and Youth Studies
Name of participant:	
Project Title:	Re-Engaging Families With Their Young People - A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.
Name of investigator:	Diana Johns
Phone:	5974 2902

1. I have received a statement explaining both the observation (of the group conference) and the interview involved in this project.
2. I consent to participate in the above project, the particulars of which - including details of the interviews - have been explained to me.
3. I authorise the investigator to observe the group conference and to interview me.
4. I acknowledge that:
 - (a) Having read the letter ('Plain Language Statement'), I agree to the general purpose, methods and demands of the study.
 - (b) I have been informed that I am free to withdraw from the project at any time and to withdraw any unprocessed data previously supplied.
 - (c) The project is for the purpose of research and/or teaching. It may not be of direct benefit to me.
 - (d) The confidentiality of the information I provide will be safeguarded. However should information of a confidential nature need to be disclosed for moral, clinical or legal reasons, I will be given an opportunity to negotiate the terms of this disclosure.
 - (e) The security of the research data is assured during and after completion of the study. The data collected during the study may be published, and a report of the project outcomes will be provided to Anglicare Victoria. Any information which will identify me will not be used.

Participant's Consent

Name:	_____	Date:	_____
	<i>(Participant)</i>		

Name:	_____	Date:	_____
	<i>(Witness to signature)</i>		

Where participant is under 18 years of age:

I consent to the participation of _____
in the above project.

Signature:	(1) _____	(2) _____	Date:	_____
	<i>(Signatures of parents or guardians)</i>			

Name:	_____	Date:	_____
	<i>(Witness to signature)</i>		

Participants should be given a photocopy of this consent form after it has been signed.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745.

The researcher has explained that she wishes to tape record the interview/s.
This is to ensure that information supplied is accurately recorded and to assist
in the review and collation of information and in writing up the results.

I consent / I do not consent to any interview being tape recorded.

Signed:

Date:

Co-signed :
(By a parent or guardian if under 18)

Date:

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745.

Appendix 10:

Interview Schedule —
Young Person

Young Person Interview

No: _____
Date: _____

Preface...

I want to ask you about how you felt about the conference - your thoughts and feelings before, during and after it took place.

And about whether you feel or felt *supported*, before during and after the conference.

Also, what it was like for you to have your [family members] there to support you... things like that.

If any of my questions seem a bit personal or sensitive, just say. You don't have to talk about anything you don't want to. And if you want to stop at any time, just say so. That's fine.

Everything we talk about, I will treat as **confidential**. If you say something then decide you don't want me to use it, that's fine - just tell me and I won't use it.

And I won't use anything that could identify you or your friends or family.

One last thing before we start, it would really help me for when I'm collecting all my information and writing it all down later, if I could tape record what we say today. How do you feel about me turning the tape recorder on? Is that ok? (If not ok, that's fine, I understand.)

☐ YES

☐ NO

Section 1: Demographic type questions

1. Can I ask how old you are?
2. Female / Male (*circle one*)
3. Are you at school? If so, what year and how often do you go?
4. Do you have a job of any sort? What sort of work is it/ where are you employed?
5. Does your family speak any language/s other than english? If so, which language/s?
6. What language do you prefer to speak?
7. Were you born in Australia? (If not, in which country?)
8. Were your parents born in Australia? (If not, in which country?)
9. Do you identify with a particular cultural or ethnic group? (If so, which one?)
10. Does your family identify with a particular cultural or ethnic group? (If so, which one?)

Section 2: Home / family situation

1. Can I ask who you live with and how you're related to them?
[e.g. mother / father/ brother(s) / sister(s) / others:
.....]
2. When I ask you about your 'family', who are the people that you think of? What makes them 'family' to you?
3. [You may have just answered this question, but...] Is there a way of being, or talking, or a way of doing things that you most associate with your family (or 'being at home')?
4. Who do you feel most 'connected to', or supported by, in your day to day life? (eg. family member/s, school friends, neighbourhood friends, youth worker?)

5. What sort of everyday situation or activity makes you feel most comfortable? (eg. being at home with family/ with friends/ alone? Being at school? Playing sport? Hanging out with mates?)
6. What sort of everyday activity or situation makes you feel most uncomfortable?

Section 3: Before the conference

1. Thinking about before the conference, about when you [committed the offence], who did you feel you could rely on for support?
2. Who did you feel you could rely on *most*?
3. Tell me about how your family reacted when you were arrested/had to go to court? Did they go with you to court? (Who exactly?)
4. Was their reaction typical of how you most often relate to each other?
5. Was it your *and* your family's decision to do the group conference? Whose was it mainly?
6. What most worried you about doing the conference?
7. What did you expect the conference would be like?

Section 4: During the conference

1. In the conference, who did you feel you could rely on for support?
2. Who did you feel you could rely on *most*?
3. How do you think your [family members] felt about being part of the conference?
4. Do any of these words describe what you felt from your [family members] during the conference: support? pressure? respect?
5. What other words would you use?

6. Is that how you and your [family members] usually relate to each other, in your normal day-to-day life? If not, what's different?
7. (If anything different noted) ...do you think the setting made a difference? (i.e. the conference being a mediated meeting, providing an opportunity for everyone to have their say, with rules about respect and confidentiality, etc.)
8. Is there anyone else that you would have liked at the conference, for support? (eg. friend, extended family member, etc)
9. Can you tell me what difference this person being there would have made? (Would you have felt more supported?)

Section 5: After the conference

1. Now the conference is over, do you feel that you and your family relate to each other in the same way as before? If not, what do you think is different?
2. If you did get into trouble again, do you think your family would react in the same way as they did before? If not, what might be different?
3. If you had to do it all over again, would you go to a group conference?
4. What was the worst thing about doing the conference?
5. What was the best thing about doing the conference?

And finally...

1. Is there anything else you'd like to say?
2. Do you have any questions you would like to ask me? ...*the end*.

Appendix 11:
Interview Schedule —
Family Member

Interview with Family Member/s

Preface..

I want to ask you about how you felt about the conference - before, during and afterwards - and whether you think it's had any effect on how you and [yp] relate to each other, and on how [yp] seems to you in general.

I'm interested in your support of [yp] and how that felt for you, and what sort of bearing your support had on how the conference went. Also, any ongoing effects that your support might have on [yp].

Some of my questions might seem a bit personal or sensitive - I want to reassure you that you don't have to talk about anything that you don't wish to, and because this interview is entirely **voluntary**, you can say you want to stop at any time.

I will treat everything we talk about as **confidential**. If you say something then decide you don't want me to use it, just tell me and I won't use it in my research. I won't use anything that could identify you or your family.

And lastly, before we begin, it would really help me in my note taking and for when I'm writing up all my information afterwards, if I could tape record our conversation today - how do you feel about me turning on the tape recorder? Is that alright? (If not alright, that's fine. I understand.)

YES

☐

NO

☐

Section 1: Home / family situation

1. What is your relationship to [YP]?
2. How would you describe your relationship with [YP]?
(i.e what sort of words would you use - any of these: communicative? non-communicative? practical?)
3. Are there regular times that you spend together or are at home together? (eg. mealtimes? evening TV?)

3. Clearly you give [yp] support in his life - are there any other people or places that [yp] would feel or get support from, do you think? (detail?)

Section 2: Before the conference

1. Did you attend court with [YP]? (If no, go to Q.7)
2. What was your role? (i.e. did you say or do anything in court? any participation in the proceedings? or more an unspoken/passive role?)
3. Did you go with any expectations? And what happened when you were there?
4. How did you feel during this time?
5. Did you feel any sense of control over/ input into what was happening?
6. What about afterwards - did the court case have any effects on how you and [YP] related to each other?
7. When did you first hear about the conference?
8. How did you feel about the idea of doing a conference, when you first heard about it?
9. Who do you think was most keen to participate, in your family? Was it a family decision?
10. Was there any pressure on [YP] to participate? If so, from whom?

Section 3: During the conference

1. What did you feel was your role in the conference?
2. Did you have any expectations of what it might be like?
3. How was this different to what you felt or did in court? (e.g. more or less participatory? more or less comfortable?)

4. Did you feel any sort of emotion during the conference (perhaps on behalf of [YP])?
5. If so, can you tell me about these feeling / this experience? (Did the feelings come and go? When were they strongest?)
6. Did you sense that [yp] felt any shame? What was your response to this feeling?
7. Can you describe how you were feeling when [YP] spoke?
8. ...When [the victim/s] spoke?
9. ...When [the police] spoke?
10. Did you feel that [yp] had any sense of responsibility for what he'd done? What was your response to this feeling?
11. When did you feel the most amount/highest level of support and/or care for [YP]?
12. Did you have the same feelings of support when you were in court with [YP]? If not, why do you think this was?
13. Did you experience any sort of closeness or warmth or forgiveness - either with [YP] or with anyone else during the conference?
14. If so, can you tell me what this felt like, and how or when this occurred?
15. The fact that the conference was a mediated meeting, quite formal, with guidelines about showing respect and listening what each person had to say - do you think that this had any effect on what was said? (Can you explain your impression?)
16. Do you think that *what* was said and *how* it was said in the conference was different to the way you [his family] and [YP] would normally speak and interact?
17. And if so, was this due to the conference setting being fairly controlled, or something else? (if something else, could you please explain).

Section 4: After the conference

1. Now the conference is over, has anything changed? (eg. do you feel that you and [YP] relate to each other in the same way as before? If not, what do you think is different?)
2. If [YP] did get into trouble again, do you think you would react in the same way as they did before? If not, what might be different?
3. If you had to do it all over again, would you go to a group conference?
4. What was the worst thing about doing the conference?
5. What was the best thing about doing the conference?
6. It's said that when someone commits a crime, it harms not only the victim, but their friends and family, as well as the family and people close to the offender. Did it feel that way to you, when you found out [yp] had committed the offence/s?
7. Has the conference helped in any way to repair that harm / the damage done?
8. Would you describe the conference as a "success"? Can you explain what you mean?

Section 5: Demographic type questions

1. Can I ask which age bracket you fit into? (circle:)
18 -25 25 - 35 35 - 50 over 50
2. Do you prefer to speak a language other than english?
(If so, which: _____)
3. Do you identify with a particular cultural or ethnic group?
(If so, which: _____)
4. Do you regular attend any sort of work or study/education?
(If so, what? _____)

5. Can I ask you about your daily or weekly routine, for instance, how much of each day are you at home?
(i.e when you are not at work or other regular commitments)

6. What sort of hours are you at work or other regular commitments?

And finally...

1. As a way of rounding up what we've talked about, can I ask, do you think the conference was a 'soft option' for [yp]? (Can you explain what you mean?)

2. Is there anything else you'd like to say, in addition to what we've already talked about?

3. Are there any questions you would like to ask me?

...the end.

**Thank you for agreeing to talk to me and for having me in your home.
I really appreciate your time and your openness.**

**Would you mind if I contacted you again in around four months time
(to have another chat about how things are going, and whether
anything's changed)? I'll telephone you in (month), if that's alright.**

Appendix 12:

Focus Group Invitation — sample

Sergeant [name]
Victoria Police
Youth Advisory Unit
637 Flinders Street
Melbourne, Victoria 3000

8th April 2003

Dear Sergeant [name],

I am writing to invite you to participate in a focus group as part of research I am doing into the Juvenile Justice Group Conferencing program currently run by Anglicare Victoria.

Firstly, though, I'd like to introduce myself and explain what I'm doing. My name is Diana Johns and I am studying for a Masters Degree by Research at RMIT University, in the Department of Justice and Youth Studies. The title of my research is:

Re-Engaging Families with Their Young People -
A Qualitative Study of Juvenile Justice Group Conferencing in Victoria.

The focus of my research is on the experience of group conferences from the perspective of young people (offenders) and their families. In particular, I am interested in exploring the significance of the role played by family members (and 'significant others') in the conference process. That is, during the conference itself and afterwards, in the ensuing process of 'reintegration' of the young person (if, indeed, this takes place at all).

Specifically, my research hinges on the question: How do offenders' family dynamics impinge upon group conferences and their outcomes?

By observing conferences and interviewing participants, my aim is to develop a detailed and rounded picture of the conference process and the role of the young person's family in it.

<p>Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745. Details of the complaints procedure are available from the above address.</p>
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The purpose of the focus group is to add to this information your professional perspective of young people's family engagement in the conference process.

The focus group will comprise informal discussion around a series of questions about the role of an offender's family in a conference, and the extent to which their participation affects conference outcomes.

I would envisage this forum taking between 1½ and 2 hours. With permission, the forum will be tape recorded, to ensure accuracy and to enable me to review and collate the information at a later date.

I invite you to participate in this focus group, to be held at RMIT city campus (I will notify you of the exact location closer to the event) on one of the following dates:

- Wednesday 21st May, 2003, 6pm-8pm;
- or
- Friday 23rd May, 2003, 10am-12pm.

I have attached a form for you to indicate whether you are able to attend, and to specify the date and time that would be preferable. If you are unable to attend, please indicate whether I could meet with you at a more convenient time, for a short informal interview. I enclose a reply paid envelope for your convenience.

I am required by RMIT Ethics Committee to inform you that, if you agree to participate in the study, you are free to withdraw at any time and to withdraw any unprocessed data previously supplied.

If you have any questions or concerns about the research, please feel free to contact me by phone on 5974 2902, or email: dfj@alphalink.com.au.

Thank you in advance for your consideration and cooperation.

Yours sincerely,

Diana Johns.
Postgraduate Student,
Master of Arts by Research
Department of Justice and Youth Studies
RMIT University, Bundoora.

<small>Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745. Details of the complaints procedure are available from the above address.</small>
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☒ Please return this form in the enclosed reply paid envelope:

- ☐ I am willing to participate in the focus group for the purposes of the research outlined.
- ☐ I am able to attend the focus group on **Wednesday 21st May, at 6pm.**
- ☐ I am able to attend the focus group on **Friday 23rd May, at 10am.**
- ☐ I am unable to attend and/or participate in the focus group.
- ☐ Please contact me to arrange a more convenient time to meet:
- ☐ Contact me by phone: _____
- ☐ Contact me by email: _____

Signed: _____

Date: ____/____/2003

Name: (please print)

Appendix 13:

Focus Group Consent Form

RMIT HUMAN RESEARCH ETHICS COMMITTEE

Prescribed Consent Form For Persons Participating In Research Projects Involving Interviews, Questionnaires or Disclosure of Personal Information

FACULTY of	Education, Language and Community Services	
DEPARTMENT of	Justice and Youth Studies	
Name of participant:		
Project Title:	Re-Engaging Families With Their Young People - A Qualitative	
	Study of Juvenile Justice Group Conferencing in Victoria.	
Name of researcher:	Diana Johns	Phone: XXXX XXXX

1. I have received a letter explaining the focus group/interview involved in this project.
2. I consent to participate in the above project, the particulars of which have been explained to me.
3. I authorise the researcher to conduct the focus group/interview in which I will participate.
4. I acknowledge that:
 - (f) Having read the letter, I agree to the general purpose, methods and demands of the study.
 - (g) I have been informed that I am free to withdraw from the project at any time and to withdraw any unprocessed data previously supplied.
 - (h) The project is for the purpose of research and/or teaching. It may not be of direct benefit to me.
 - (i) The confidentiality of the information I provide will be safeguarded. However should information of a confidential nature need to be disclosed for moral or legal reasons, I will be given an opportunity to negotiate the terms of this disclosure.
 - (j) The security of the research data is assured during and after completion of the study. The data collected during the study may be published, and a report of the project outcomes will be provided to Anglicare Victoria. Any information which will identify me will not be used.

Participant's Consent

Name:	_____	Date:	_____
	(Participant)		
Name:	_____	Date:	_____
	(Witness to signature)		

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745. Details of the complaints procedure are available from the above address.

The researcher has explained that she wishes to tape record the focus group/interview. This is to ensure that information supplied is accurately recorded and to assist in the review and collation of information and in writing up the results.

I consent / I do not consent to the focus group / interview being tape recorded.

Signed: _____ Date: _____

Name: (please print) _____

<p>Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745. Details of the complaints procedure are available from the above address.</p>
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Appendix 14:
Focus Group Agenda

FOCUS GROUP AGENDA

1. Welcome & introductions

- ⇒ Explanation of focus group format and its purpose

2. Explanation of terms:

- ⇒ **Young person** - offender; person who's committed the offence.
- ⇒ **Victims** – primary victim/s and their supporters (doesn't include offender's supports).
- ⇒ **Young person's support network** – may include family members, youth workers, friends, significant others, whoever they have asked to participate in the conference.
- ⇒ **Reintegrative shaming** – shaming that disapproves of the *act* (i.e. the offence), but not the *actor* (i.e. the offender). The process is characterised by a *sustained relationship of respect*, and followed by *gestures of reacceptance* into the community (Braithwaite, 1989).
- ⇒ **Stigmatic shaming** – shaming characterised by persistent disapproval of the act *and* the actor. Once the label “offender” or “criminal” is applied, it is seen to dominate all other characteristics.

3. Questions & discussion (10 questions @ 10 minutes each, approximately)

4. Close...

- ⇒ Thank you for participating in this focus group.
- ⇒ I would be happy to provide copy of my research report upon completion (at the end of the year) – let me know if you are interested.

Diana Johns
Masters by Research
Department of Justice and Youth Studies,
RMIT University, Bundoora.

Appendix 15:

Focus Group Questions

FOCUS GROUP QUESTIONS:

These questions are intended to stimulate discussion. I invite and encourage you to share your own experience, thoughts and opinions.

Questions:

1. Does the participation of a young person's family members in a group conference affect or determine the outcomes of the conference? How?
2. Are there other, more significant factors that may determine or influence these outcomes? What are the most significant?
3. To what extent is the immediate "success" of the conference (i.e. whether it "works" on the day) determined by:
 - a. Family dynamics? (i.e. power play & expectations)
 - b. Family behaviour during the conference?
 - c. Family background factors? (e.g. ethnic, cultural, socioeconomic)
 - d. Family support of the young person?
 - e. The expression of emotion? By family or others?
4. How would you determine a conference to be a "success" (in the immediate and longer term)?
5. Is recidivism a valid measure of the success of the conferencing process? Are other indicators more meaningful? If so what, and for whom?
6. According to John Braithwaite (1989) there are two different kinds of shaming – one is *reintegrative*, the other *stigmatising*. Do you agree that there is a difference between these sorts of shame, in practice?
7. If yes, how might reintegrative shaming work in relation to the young offender's family? What role might other participants in the process (eg. police, victims, victim supporters, or other offender supporters) play in the process of reintegrative shaming?
8. What does "reintegration" actually mean? Reintegrated into *what*? Does it require a pre-existent and identifiable "community of care" that is engaged in the conference process?
9. What is the role of the family in this process? Does family have to be part of this?
10. What are the best indicators that a young person is being or has been 'reintegrated' (i.e. what does reintegration look like in practice)?

Thank you very much for coming today and participating in this focus group.

Appendix 16:

Typical Conference Agenda

AGENDA

JUVENILE JUSTICE GROUP CONFERENCE

6.30 pm	Scheduled Start Time
6.35 – 6.40pm	Welcome and Introductions
6.40 – 7.25pm	Information Stage: Detective Senior Constable [name] [Young person's name] Victim Issues: [Names of victims & victims' supporters] [Victim Representative's Name] – VRAS Family/Support People: [Names] [Name] – Legal Representative
7.25 – 7.35pm	Drawing together of issues raised
7.35 – 7.50pm	Break (for refreshments)
7.50 – 8.05pm	Plan to be devised [Young person, supports & lawyer] to meet regarding plan
8.05 – 8.15pm	Plan to be put to group for comments
8.15pm	Termination of meeting.

Appendix 17:

Convenor's Introduction — sample

Conference Introduction

Welcome. As you are aware my name is [name] and I will be facilitating the group conference. I thank you all for agreeing to take part in the conference this evening and commend both [young person] and the victims for choosing to participate as I acknowledge that it can be a difficult and long process. Unfortunately due to unforeseeable circumstances, the victims involved in the [incident] were not able to make it as planned; these victims and the victims from the other [number of] incidents will consequently be represented by VRAS who will speak on their behalf.

I will start by explaining my role in the conference and then we might just work our way around the room for you to introduce yourselves and maybe a brief explanation of your role in the conference today.

As I said before I will be facilitating the conference. This means I will try and make sure that everybody has a chance to have his or her say without being interrupted. My role will also consist of mediating and formulating recommendations and plans. However, I am not here to make a decision for anyone nor am I here to provide any answers or even come up with a plan; this is to be done by the group.

Go around the room and introduce each other.

I'll just start by outlining the process and purposes of the conference. The primary purpose of a group conference is to empower the family and other supports that you [young person] may have, as well as to strengthen these relationships in order to deal with the offending behaviour as well as prevent and reduce re-offending. It is also to make amends to the victim where appropriate as well as to hold you [young person] accountable for your actions and the impact of your offending.

A little about the philosophy behind the group conference: the concept is about restoring justice to the community rather than simply punishing the offender. Behind this philosophy is the belief that offences have impacts on victims, communities and the offender and this impact can only be understood when it is fully explored, like in a conference such as this. It is also about the fact that these people most affected by the offence should have the opportunity to have a say in response to the offending. In other words, the victim should be given the opportunity to have a say in the consequences for the offender as well as be able to explain to the offender how the offence made them feel.

The conference today will focus on the incidents that happened on [dates]. It is important to understand that we will focus on what [young person] did and how this behaviour has impacted on others. We want to explore in what way people have been affected and hopefully work towards repairing the harm that has resulted. Is everybody clear about the process?

Just a few housekeeping rules before we begin:

Confidentiality: I ask that everyone here makes every effort to make sure that the information is confidential and is not shared with anyone else outside of this room. One exception to this of course will be that the magistrate will receive a report, which will contain a summary of the conference and the outcome plan.

Respect: I also ask that you respect everyone in this room and their right to speak without being spoken over or without feeling intimidated or threatened. I know that one of you may hear something that you do not agree with or feel is not right; I ask you to wait until the person has spoken and then you will be given an opportunity to say what you would like to say.

If at any time you feel that you are becoming uncomfortable, angry, upset or feel that you need a break please let me know and we'll have some "time out".

I must tell you [young person] that you do not have to participate in this conference and are free to leave at any time, as is anyone else. If you leave you will return to court and be sentenced in regards to the offending.

By now you will all have seen a copy of the agenda. I will go through this now and explain the different stages we will be moving through, during the conference.

Before we start does anybody have any questions they would like to ask?
